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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NE–05–AD; Amendment 39–12373; AD 2001–16–05]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc. RB211 Trent Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD) that is applicable to Rolls-Royce plc. (RR) RB211 Trent 768–60, Trent 772–60, and Trent 772B–60 turbofan engines. That AD currently requires the removal of low pressure compressor (LPC) fan blades, initial and repetitive ultrasonic inspections for cracks in LPC fan blade dovetail roots, and if necessary, replacement with serviceable parts. This amendment requires earlier initial and more frequent repetitive ultrasonic inspections of LPC fan blades, with inspection thresholds and intervals specified by engine model. This amendment is prompted by data collected by RR, that identifies the need to inspect LPC fan blade dovetail roots at an earlier initial threshold and at more frequent intervals than is required by the existing AD. The actions specified in this AD are intended to prevent possible multiple LPC fan blade failures, which could result in an uncontained engine failure and damage to the airplane.

DATES: Effective date October 9, 2001. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of October 9, 2001.

Comments for inclusion in the Rules Docket must be received on or before October 9, 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–05–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.

The service information referenced in this AD may be obtained from Rolls-Royce plc, PO Box 31, Derby, England; telephone: 011–44–1332–249428; fax: 011–44–1332–249223. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Keith Mead, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7744; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: On June 21, 2000, the FAA issued AD 2000–13–05, Amendment 39–11804 (65 FR 40983, July 3, 2000), to require initial and repetitive ultrasonic inspections for cracks in LPC fan blade dovetail roots, and if necessary, replacement with serviceable parts. That action was prompted by reports of LPC fan blade dovetail root cracks in a factory engine. That condition, if not corrected, could result in an uncontained engine failure and damage to the airplane.

Since that AD was issued, data has been collected by RR that identifies the need to ultrasonically inspect LPC fan blade dovetail roots at earlier initial thresholds and at more frequent repetitive inspection intervals, than is required by the current AD. RR has also determined that the different Trent engine models require different initial and repetitive inspection interval requirements. RR has also instituted a procedure to allow repetitive ultrasonic inspections of LPC fan blade dovetail roots on blades not removed from the engine.

Manufacturer's Service Information

Rolls-Royce plc. has issued service bulletin (SB) No. RB.211–72–C878, Revision 4, dated January 22, 2001, that:

- Specifies procedures for removing LPC fan blades and performing initial and repetitive ultrasonic inspections for cracks in LPC fan blade dovetail roots, at earlier initial thresholds and at more frequent repetitive inspection intervals, than the inspections required by the current AD.
- Specifies that the different Trent engine models require different initial and repetitive inspection intervals.
- Adds a procedure that does not require blade removal from the engine in order to perform repetitive ultrasonic inspections for cracks in LPC fan blade dovetail roots.
- Requires that for the initial inspection and for at least every third inspection interval thereafter, the LPC fan blades be removed from the engine, to be ultrasonically inspected.

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom (UK), classified this SB as mandatory and issued AD 003–11–99 in order to assure the airworthiness of these engines in the UK.

Bilateral Airworthiness Agreement

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.

FAA's Determination of an Unsafe Condition and Proposed Actions

Although none of these affected engine models are used on any airplanes that are registered in the United States, the possibility exists that the engine models could be used on airplanes that are registered in the United States in the future. Since an unsafe condition has been identified that is likely to exist or develop on other RR RB211 Trent 768–

60, Trent 772–60, and Trent 772B–60 turbofan engine models of the same type design, this AD is being issued to prevent possible multiple LPC fan blade failures, which could result in an uncontained engine failure and damage to the airplane. This AD requires:

• Initial ultrasonic inspections of the fan blade root with blades removed,

• Repetitive ultrasonic inspections of the fan blade root with blades removed or installed, and

• Ultrasonic inspection to be done with the fan blades removed at least every third inspection. The actions are required to be accomplished in accordance with the service bulletin described previously.

Immediate Adoption of This AD

Since there are currently no domestic operators of this engine model, notice and opportunity for prior public comment are unnecessary. Therefore, a situation exists that allows the immediate adoption of this regulation.

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 action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NE–05–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, 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 39–11804 (65 FR 40983, July 3, 2000) and adding a new airworthiness directive, Amendment 39–12373, to read as follows:

2001–16–05: Rolls-Royce plc. Amendment 39–12373. Docket 2000–NE–05–AD. Supersedes AD 2000–13–05, Amendment 39–11804.

Applicability: This airworthiness directive (AD) is applicable to Rolls-Royce plc. (RR) RB211 Trent 768–60, Trent 772–60, and Trent 772B–60 turbofan engine models with Low Pressure Compressor (LPC) fan blade part numbers (P/N's) FK22580, FK23411, FK25441, and FK25968 installed. These engines are installed on, but not limited to Airbus Industrie A330–341 and A330–342 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 (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Compliance with this AD is required as indicated.

To prevent possible multiple LPC fan blade failures, which could result in an uncontained engine failure and damage to the airplane, do the following:

Initial Ultrasonic Inspection

(a) For fan blades P/N's FK22580, FK23411, FK25411, and FK25968, do an initial ultrasonic inspection of the dovetail roots in accordance with Accomplishment Instructions, Section 3.A. (Method A, blades removed from engine) of Rolls-Royce (RR) Service bulletin (SB) RB.211–72–C878, Revision 4, dated January 22, 2001, at or before the cycles-since-new (CSN) requirements of Table 1 of this AD:

TABLE 1.—INITIAL AND REPETITIVE ULTRASONIC INSPECTION REQUIREMENTS

Engine model	Cycles-since-new (CSN) on the effective date of this AD	Initial inspection	Repetitive inspection interval using 3.A method A.	Repetitive inspection interval using 3.B. method B.
(1) 768–60 and 772–60	(i) Fewer than 2,000 CSN	Before accumulating 2,000 CSN	340 cycles-since-last-inspection (CSLI).	280 CSLI.
	(ii) 2,000 CSN or more	Within 100 cycles-in-service (CIS) after the effective date of this AD.	340 cycles-since-last-inspection (CSLI).	280 CSLI.
(2) 772B–60	(i) Fewer than 1,000 CSN	Before accumulating 1,000 CSN	250 CSLI	200 CSLI.
	(ii) 1,000 CSN or more	Within 100 CIS after the effective date of this AD.	250 CSLI	200 CSLI.

Credit for Previous Inspections

(b) Previous inspections performed using RR SB RB.211–72–C878, Revision 1, dated December 10, 1999; RR SB RB.211–72–C878, Revision 2, dated November 13, 2000; RR SB RB.211–72–C878, Revision 3, dated January 3, 2001, comply with the initial inspection requirements of paragraph (a) of this AD.

Repetitive Ultrasonic Inspections

(c) Inspect LPC fan blades in accordance with either Accomplishment Instructions, Section 3.A. (Method A, blades removed from engine), or Section 3.B. (Method B, blades installed in engine), of RR SB RB.211–72–C878, Revision 4, dated January 22, 2001, at or before CSLI interval requirements in Table 1 of this AD.

Removed Blades for Every Third Ultrasonic Inspection Interval

(d) For at least every third ultrasonic inspection interval, inspect LPC fan blades in accordance with Accomplishment Instructions, Section 3.A. (Method A, blades removed from engine) of RR SB RB.211–72–C878, Revision 4, dated January 22, 2001.

LPC Fan Blade Disposition

(e) Before further flight, remove from service cracked or suspect cracked fan blades which do not meet the acceptance criteria of Appendix 1, Section 4, paragraph B, or Appendix 2, Section 4, paragraphs B and C, of RR SB RB.211–72–C878, Revision 4, dated January 22, 2001.

Alternative Methods of Compliance

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must 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 airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

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

Incorporation by Reference

(h) The actions required by this AD must be performed in accordance with Rolls-Royce plc. Service Bulletin No. RB.211–72–C878, Revision 4, dated January 22, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Rolls-Royce plc, PO Box 31, Derby, England; telephone: 011–44–1332–249428; fax: 011–44–1332–249223. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, DC.

Effective Date of This AD

(i) This amendment becomes effective on October 9, 2001.

Issued in Burlington, Massachusetts, on August 1, 2001.

Mark C. Fulmer,

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

[FR Doc. 01–19936 Filed 8–9–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–ACE–3]

Amendment to Class E Airspace; Cabool, MO

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which revises Class E airspace at Cabool, MO.

EFFECTIVE DATE: 0901 UTC, September 6, 2001.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on May 9, 2001 (66 FR 23558). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on September 6, 2001. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on July 23, 2001.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 01–20031 Filed 8–9–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–ACE–4]

Amendment to Class E Airspace; Chillicothe, MO

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which

revises Class E airspace at Chillicothe, MO.

EFFECTIVE DATE: 0901 UTC, September 6, 2001.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on May 9, 2001 (66 FR 23557). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on September 6, 2001. No adverse comments were received, and thus this notice confirms that this direct rule will become effective on that date.

Issued in Kansas City, MO on July 23, 2001.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 01–20032 Filed 8–9–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–ACE–5]

Amendment to Class E Airspace; Olathe, KS

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which revises Class E airspace at Olathe, KS.

EFFECTIVE DATE: 0901 UTC, September 6, 2001.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on May 9, 2001 (66 FR 23560). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on September 6, 2001. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on July 23, 2001.

Paul J. Sheridan

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 01–20033 Filed 8–9–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 734 and 740

[Docket No. 010710166–1166–01]

RIN 0694–AB76

Revisions to the Export Administration Regulations; Country Group E:1; License Exception TMP

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Interim final rule.

SUMMARY: This interim final rule amends the Export Administration Regulations (EAR) by revising Country Group E:1 to include all terrorist-supporting countries, and replacing references to Cuba, Iran, Iraq, Libya, North Korea, Sudan and Syria with Country Group E:1 where appropriate. This rule also expands the scope of eligible countries for License Exception TMP for exhibition and demonstration to all countries except the new Country Group E:1, with certain restrictions.

DATES: This rule is effective August 10, 2001. Comments on this rule must be received on or before September 10, 2001.

ADDRESSES: Written comments should be sent to Sharron Cook, Regulatory Policy Division, Bureau of Export Administration, Room 2705, 14th Street and Pennsylvania Ave., NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Sharron Cook, Regulatory Policy Division, Bureau of Export Administration, at (202) 482–2440.

SUPPLEMENTARY INFORMATION:

Background

The Bureau of Export Administration (BXA) is amending the Export Administration Regulations (EAR) to continue its efforts to simplify the EAR and to reflect current business practice and world circumstance. Specifically, this rule amends the EAR by revising the list of countries included in Country Group E:1 in Supplement No. 1 to part 740.

This rule revises Country Group E:1, in Supplement no. 1 to part 740 of the EAR. This country group currently lists the countries subject to United Nations embargo, is revised by listing countries designated by the Department of State as those countries whose governments have repeatedly provided support for acts of international terrorism (Cuba, Iran, Iraq, Libya, North Korea, Sudan and Syria). Therefore, this rule removes Angola, Bosnia and Herzegovina, and Rwanda from Country Group E:1, and adds Iran, Sudan and Syria. This rule does not change export control policy or license requirements for these countries or for Angola, Serbia and Montenegro, or Rwanda set forth in parts 742 and 746. This rule also makes conforming changes in § 734.4—De minimis U.S. content, § 740.9—Temporary imports, export, and reexports (TMP), § 740.10—Servicing and replacement of parts and equipment (RPL) by replacing references to those countries with the phrase ''Country Group E:1.''

This rule also expands the scope of eligible countries for License Exception TMP for exhibition and demonstration by making Country Group D:1 eligible for this provision. Under License Exception TMP, you may now export or reexport commodities and software for exhibition or demonstration in any country, including countries in Country Group D:1, except a country listed in Country Group E:1, subject to the terms and conditions of License Exception TMP and the restrictions that apply to all License Exceptions in § 740.2 of the EAR.

This rule clarifies that a license exception may be applicable to items for which a license would otherwise be required under General Prohibition one, two, three, or eight.

Rulemaking Requirements

1. This interim final rule has been determined to be not significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a current valid OMB Control Number. This rule involves a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0694–0088.

3. This rule does not contain policies with Federalism impacts as that term is defined in Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (See 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this interim rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. 553 or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

However, because of the importance of the issues raised by these regulations, this rule is being issued in interim form and BXA will consider comments in the development of the final regulations.

Accordingly, the Department encourages interested persons who wish to comment to do it at the earliest possible time to permit the fullest consideration of their views.

The period for submission of comments will close September 10, 2001. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the persons submitting the comments and will not consider them in the development of final regulations. All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires comments be submitted in written form. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying.

The public record concerning these comments will be maintained in the Bureau of Export Administration, Office of Administration, U.S. Department of Commerce, Room 6883, 14th and Constitution Avenue, NW., Washington, DC 20230; (202) 482–0637. This component does not maintain a separate public inspection facility. Requesters should first view BXA's FOIA website (which can be reached through *http://www.bxa.doc.gov/foia*). If the records sought cannot be located at this site, or if the requester does not have access to a computer, please call the number above for assistance.

List of Subjects

15 CFR Part 734

Administrative practice and procedure, Exports, Foreign trade.

15 CFR Part 740

Administrative practice and procedure, Exports, Foreign trade, Reporting and Record keeping requirements.

Accordingly, parts 734 and 740 of the Export Administration Regulations (15 CFR Parts 730–799) are amended as follows:

1. The authority citation for 15 CFR part 734 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; Pub. L. 106–508; 50 U.S.C. 1701 *et seq.*; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp. p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13206, 66 FR 18397, April 9, 2001; Notice of November 9, 2000, 65 FR 68063, 3 CFR, 2000 Comp., p. 408.

2. The authority citation for part 740 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; Pub. L. 106–508; 50 U.S.C. 1701 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13206, 66 FR 18397, April 9, 2001.

PART 734—[AMENDED]

3. Section 734.4 is amended by revising the introductory text of paragraph (c) to read as follows:

§ 734.4 De minimis U.S. content.

* * * * *

(c) Except as provided in paragraph (a) and (b) of this section for certain computers and items controlled for EI reasons, the following reexports are *not* subject to the EAR when made to either an embargoed country listed in part 746 of the EAR or to a terrorist-supporting country listed in Country Group E:1 (see Supplement No. 1 to part 740 of the EAR):

* * * * *

PART 740—AMENDED

4. Section 740.1 is amended in paragraph (a) by:

a. Revising the phrase ''Prohibition One, Two, or Three,'' to read ''Prohibition One, Two, Three, or Eight,'', in the first sentence; and

b. Revising the phrase ''Prohibitions Four, Seven, Eight, Nine, or Ten,'' to read ''Prohibitions Four, Seven, Nine, or Ten,'' in the last sentence.

5. Section 740.8 is amended by revising the phrase ''except Cuba, Libya, North Korea, Iraq, Iran, Syria, and Sudan'' to read ''except destinations in Country Group E:1 (see Supplement No. 1 to this part).'' in paragraph (c).

6. Section 740.9 is amended:

a. By revising the heading and first sentence of paragraph (a)(2)(iii); and

b. By revising paragraph (a)(3)(i)(A) to read as follows:

§ 740.9 Temporary imports, exports, and reexports (TMP).

* * * * *

(a) * * *

(2) * * *

(iii) *Exhibition and demonstration.* You may export or reexport under this provision commodities and software for exhibition or demonstration in all countries except countries listed in Country Group E:1 (see Supplement No. 1 to this part) provided that the exporter maintains ownership of the commodities and software while they are abroad and provided that the exporter, an employee of the exporter, or the exporter's designated sales representative retains ''effective control'' over the commodities and software while they are abroad (see part 772 of the EAR for a definition of ''effective control''). * * *

* * * * *

(3) *Special restrictions.* (i) *Destinations.* (A) No commodity or software may be exported or reexported under paragraph (a) of this section to Country Group E:2 (see Supplement No. 1 to this part) except as permitted by paragraph (a)(2)(viii) of this section (news media). These destination restrictions apply to temporary exports to and for use on any vessel, aircraft or territory under the ownership, control, lease, or charter by any country in

Country Group E:2, or any national thereof.

* * * * *

7. Section 740.10 is amended:

a. By revising the phrase ''Cuba, Iran, Iraq, Sudan, Syria, Libya, or North Korea'' in paragraph (a)(3)(iv) to read ''countries in Country Group E:1 (see Supplement No. 1 to this part)'';

b. By revising paragraph (b)(2)(iv); and

c. By revising the phrase ''Cuba, Iran, Iraq, Libya, North Korea, Sudan or Syria'' in paragraph (b)(3)(i)(D) to read ''countries in Country Group E:1 (see Supplement No. 1 to this part)''.

§ 740.10 Servicing and replacement of parts and equipment (RPL).

* * * * *

(b) * * *

(2) * * *

(iv) *Terrorist supporting countries.* No repaired commodity or software may be exported or reexported to countries in Country Group E:1 (see Supplement No. 1 to this part).

* * * * *

8. Section 740.13 is amended by revising the phrase ''except Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria'' in paragraph (d)(3)(i) to read ''except destinations in Country Group E:1 (see Supplement No. 1 to this part).''

9. Section 740.15 is amended:

(a) By revising the phrase ''Cuba, Iran, Iraq, Libya, North Korea, Sudan, or Syria'' in paragraphs (a)(1)(i), (a)(1)(ii), (a)(3)(iv), (a)(3)(v), (a)(3)(vi), (a)(3)(vii), (a)(3)(viii) and (a)(3)(ix) to read ''a destination in Country Group E:1 (see Supplement No. 1 to this part)''; and

(b) By revising the phrase ''Cuba, Iran, Iraq, Sudan, Syria, Libya, and North Korea'' in paragraph (a)(2)(ii) to read ''a destination in Country Group E:1 (see Supplement No. 1 to this part)''.

10. Supplement No. 1 to part 740 is amended by revising Country Group E:1 to read as follows:

Supplement No. 1 to Part 740

* * * * *

COUNTRY GROUP E

Country	[E:1] Terrorist supporting countries	[E:2] unilateral embargo [1]
Cuba	X	X
Iran	X	
Iraq	X	
Korea, North	X	
Libya	X	X
Sudan	X	
Syria	X	

[1] In addition to the controls of the EAR that the Bureau of Export Administration administers, note that the Treasury Department's Office of Foreign Assets Control administers:

(a) A *comprehensive embargo* against Cuba, Iran, Iraq, Libya, Sudan, and the Taliban and areas of Afghanistan controlled by the Taliban;

(b) A ban on arms and specified items destined to the National Union for the Total Independence of Angola (UNITA) located in Angola; and

(c) An *embargo against certain individuals and entities*, e.g., Specially Designated Terrorists (SDT). (Note: The Department of State also imposes sanctions on certain individuals and entities, please consult with the Department of State for further information concerning these controls.)

Dated: August 1, 2001.

James J. Jochum,

Assistant Secretary for Export Administration.

[FR Doc. 01–20148 Filed 8–9–01; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–01–078]

RIN 2115–AE47

Drawbridge Operation Regulations: John Limehouse Bridge (ICW), Johns Island, SC

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is revising the regulations governing the operation of the John Limehouse Bridge across the Intracoastal Waterway mile 479.3, Johns Island, Charleston County, SC. This rule allows the owner or operator to alter the operating schedule by placing the bridge on a regular opening schedule Monday through Friday except Federal holidays and by allowing the bridge to remain closed during the morning and evening rush hours. This rule is necessary to complete construction of the replacement bridge.

DATES: This rule is effective at 12:01 a.m. on August 6, 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 [CGD07–01–078] and are available for inspection or copying at Commander (obr), Seventh Coast Guard District, 909 S.E. 1st Avenue, Miami, Florida, between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Dragon, Project Officer, Seventh Coast Guard District, Bridge Branch, at (305) 415–6743.

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. Publishing an NPRM was unnecessary and contrary to public interest since this rule only modifies the existing regulations and provides for regularly scheduled openings.

For the same reasons, 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**.

Background and Purpose

The John Limehouse Bridge across the Atlantic Intracoastal Waterway mile 479.3 at Johns Island, Charleston County, SC, has a vertical clearance of 12 feet in the closed position at mean high water and a horizontal clearance of 90 feet between fenders. On May 7, 2001, the South Carolina Department of Transportation requested a modification from the current operating regulation in 33 CFR 117.911(e) which requires the drawbridge to open on signal; except that from 6:30 a.m. to 9 a.m. and 4 p.m. to 6:30 p.m., Monday through Friday except federal holidays, the draw need open on the hour and 30 minutes after the hour. Between 9 a.m. and 4 p.m., Monday through Friday except federal holidays, from March 15 to June 15, and from September 15 to November 15, the bridge need not be opened except on the hour, 20 minutes after the hour, and 40 minutes after the hour.

Under this rule, from August 6, 2001, the John Limehouse Bridge shall open on signal: except that the draw need not open from 6:30 a.m. to 9 a.m. and from 4 p.m. to 6:30 p.m., Monday through Friday except federal holidays. Between 9 a.m. and 4 p.m., Monday through Friday except federal holidays, the draw need open only on the hour and half hour. The draw shall open as soon as possible for the passage of tugs with tows, public vessels of the United States and vessels in a situation where a delay would endanger life or property.

The John Limehouse Bridge is being replaced with a high-level fixed bridge.

In addition, the Maybank Highway Bridge, which is in close proximity to the John Limehouse Bridge, will also begin replacement construction within the next year. These two bridges are main access arteries onto and off of Johns Island, SC. This regulation will assist in improving the transportation scheme for both vehicular and vessel traffic during the construction of these bridge projects.

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), because this rule will only modify the existing regulations and will still provide for regular bridge openings.

Small Entities

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

This rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit under the John Limehouse Bridge from August 6, 2001 until about December 1, 2003. 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 as the regulations allow scheduled openings and all exempt vessels shall be passed at any time.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small entities may contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding and participating in this rulemaking. We also have a point of contact for commenting on actions by employees of the Coast Guard. 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 requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

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 concern an environmental risk to health or safety that may disproportionately affect children.

Environment

The Coast Guard has considered the environmental impact of this action and has determined under Figure 2–1, paragraph 32(e) of Commandant Instruction M16475.1D, that 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 rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

2. Revise § 117.911(e) to read as follows:

§ 117.911 Atlantic Intracoastal Waterway, Little River to Savannah River.

* * * * *

(e) *John Limehouse Bridge across the Stone River, mile 479.3 at Johns Island.* The draw of the John Limehouse Bridge

shall open on signal; except that the draw need not open from 6:30 a.m. to 9 a.m. and from 4 p.m. to 6:30 p.m., Monday through Friday except Federal holidays. Between 9 a.m. and 4 p.m., Monday through Friday except Federal holidays, the draw need open only on the hour and half hour. The draw shall open as soon as possible for the passage of tugs with tows, public vessels of the United States and vessels in a situation where a delay would endanger life or property.

* * * * *

Dated: August 2, 2001.

J.S. Carmichael,

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

[FR Doc. 01–20149 Filed 8–9–01; 8:45 am]

BILLING CODE 4910–15–U

POSTAL SERVICE

39 CFR Part 20

Global Express Guaranteed: Discounted Rates for Online Customers

AGENCY: Postal Service.

ACTION: Interim rule with request for comments.

SUMMARY: The Postal Service is offering discounted rates for online customers who purchase Global Express Guaranteed™ service. The discounted rates are based on minimum shipping volumes that average 5 pieces per week, 12 pieces per week, and 20 pieces or more per week. The Postal Service is also offering a standard Web discount for all Global Express Guaranteed customers who prepare and pay for their shipments online but do not qualify for the volume-based discounts.

DATES: This interim rule will take effect on August 9, 2001. Comments on the interim rule must be received on or before September 10, 2001.

ADDRESSES: Written comments should be mailed or hand delivered to Business Initiatives, Expedited/Package Services, U.S. Postal Service, 200 E Mansell Ct, Ste 300, Roswell, GA 30076–4850. Copies of all written comments will be available for public inspection between 9 a.m. and 4 p.m. EST, Monday through Friday, in the Expedited/Package Services Office, U.S. Postal Service, 200 E Mansell Ct, Ste 300, Roswell, GA 30076–4850.

FOR FURTHER INFORMATION CONTACT: Malcolm E. Hunt, 770–360–1104.

SUPPLEMENTARY INFORMATION: Global Express Guaranteed service is the Postal Service's premium international shipping service. Global Express Guaranteed is an expedited delivery service that is offered as a result of an alliance between the Postal Service and DHL Worldwide Express. It provides date-certain delivery service from designated U.S. ZIP Code areas to locations in over 200 destination countries and territories. Global Express Guaranteed consists of two mail classifications: Global Express Guaranteed Document Service and Global Express Guaranteed Non-Document Service. Regulations for Global Express Guaranteed service are set forth in part 210 of the *International Mail Manual* (IMM) and the *Global Express Guaranteed Service Guide.*

The Postal Service is offering discounted rates to customers who prepare and pay for their Global Express Guaranteed shipments online, offering a standard discount for all online transactions, and volume-based discounts for customers who ship minimum volumes on a weekly basis. This discount rate structure is comparable to that offered by other shippers in the international shipping marketplace.

The discounts are limited to Global Express Guaranteed shipments prepared and paid for online because the Global Express Guaranteed online application can perform the necessary activity of automatically tracking customer activity and volume for use in calculating rates. This capability is not currently available at the retail terminals in Post Offices. There is also a cost saving for the Postal Service when customers prepare and pay for shipments online. Thus, these discounts will not apply to Global Express Guaranteed shipments that are paid for at retail acceptance Post Offices.

The standard and volume-based online discount rates will be applied automatically via the Global Express Guaranteed Web application. The volume-based discounts will be calculated at three volume levels—5, 12, or 20 or more pieces per week—and will vary depending on shipment destination. For those online customers shipping fewer than 5 pieces per week, a standard discount of 5 percent off the non-discounted rate that would otherwise apply to the shipment will be offered. These rates are reflected in the four rate schedules in IMM 216.36.

The volume discounts are calculated as follows:

Week 1: All shipments receive the standard Web discount of 5 percent off the published price.

Week 2: The discount is based on how much volume was mailed in the first week.

Week 3: The discount is based on the average volume of the first 2 weeks.

Week 4: The discount is based on the average volume of the first 3 weeks.

This continues through a 12-week cycle. After a 12-week history is established, the discount is based on the average volume of the preceding 12 weeks.

Although the Postal Service is exempted by 39 U.S.C. 410(a) from the notice requirements of the Administrative Procedure Act regarding rule making (5 U.S.C.553), the Postal Service invites public comment on this interim rule at the above address.

List of Subjects in 39 CFR Part 20

Foreign relations.

The Postal Service adopts the following discounted rates and amends the IMM, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 20.1.

PART 20—[AMENDED]

1. The authority citation for 39 CFR Part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408.

2. Chapter 2 of the IMM is amended as follows to provide for the discounted rates:

International Mail Manual (IMM)

* * * * *

2 Conditions for Mailing

* * * * *

210 Global Express Guaranteed

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216 Postage

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(Add new 216.3 as follows. Renumber existing 216.3 as 216.4.)

216.3 Discounted Rates

216.31 General

Discounted rates apply to Global Express Guaranteed customers who prepare and pay for Global Express Guaranteed shipments online using the Web application located at *http://www.usps.com/gxg.* The Global Express Guaranteed online application provides the necessary systems for tracking usage and volume, as well as verifying and protecting revenue. These discounts do not apply to Global Express Guaranteed shipments that are paid for at participating Post Offices because the necessary volume tracking capabilities are not available at retail locations.

216.32 Eligibility for Online Discounts

To be eligible for discounts for purchasing Global Express Guaranteed online, customers must register via the Global Express Guaranteed Web site, *http://www.usps.com/gxg.* Registration is accomplished by selecting the designated icon on the Global Express Guaranteed home page and following the accompanying instructions. This one-time registration will establish a shipping record and a customer history for purposes of calculating the appropriate discounts. To be eligible for online discounts, customers must prepare their shipping labels and pay for their shipments online using a credit card.

216.33 Online Discounts

216.331 General

Two types of online discounts are offered: Standard discounts and volume-based discounts. The discount applies only to the postage portion of the Global Express Guaranteed rates. It does not apply to any other service charges or additional insurance coverage fees. The discounted postage rates applicable to Global Express Guaranteed are set forth in 216.36 and are separate and distinct from the postage rates set forth in 216.1 and 216.2.

216.332 Standard Web Discount

A standard discount schedule will apply to all items prepared and paid for on the Web that do not qualify for the volume discount schedule. The discount is automatically applied to each shipment.

216.333 Volume Discounts

If previous volume minimums are met, volume discounts will apply to registered customers who prepare and pay for shipments online. Volume is calculated on a weekly basis, with a week defined as Monday through Sunday. The Web application automatically tracks the customer's daily shipping activity and applies the appropriate discount based on delivery destination.

216.334 Determination of Volume Discounts

There are three different rate schedules for Global Express Guaranteed volume discounts. Each rate schedule reflects different rates based on previous usage averaging 5 shipments or more per week, 12 shipments or more per week, and 20 or more shipments per week.

The first week of shipping, all shipments get the standard online discount of 5 percent off the applicable non-discounted rate. The second week, the discount is based on the volume shipped the first week. The third week, the discount is based on the average volume of the first 2 weeks. The fourth week, the discount is based on the average volume of the first 3 weeks. This continues through a 12-week cycle. After a 12-week history is established, the discount is always based on the average volume of the preceding 12 weeks.

216.34 Online Postage Payment

216.341 Credit Card Payment

Customers must pay postage online using a credit card. The following credit cards are accepted for payment online: American Express, Diner's Club, Discover, MasterCard, and Visa.

216.342 Deposit Within 24 Hours

Customers paying postage online must enter their shipment via any of the methods outlined in 216.35 within 24 hours of the time when the label is printed or the transaction will be voided.

216.343 Postage Adjustments

Use of the online service is subject to subsequent verification of the shipment upon acceptance by the Postal Service to verify that the payment, weight, and time of entry are accurate. Registration for online service constitutes an authorization to the Postal Service to make adjustments to the initial credit charge for any postage deficiencies discovered upon acceptance. Adjustments for items paid online will be made to the customer's credit card account.

216.344 Notification

An email notification will be provided to each customer showing the exact postage amount applicable for the online shipment, as well as the acceptance time and date.

216.35 Shipment Preparation and Deposit

216.351 Preparation

Customers must prepare shipments following the shipping preparation instructions on the Global Express Guaranteed Web site.

216.352 Deposit

The following choices are available for depositing Global Express Guaranteed shipments prepared online:

a. On-Call and scheduled pickup services are available for an added charge of $10.25 for each pickup stop, regardless of the number of pieces picked up. Only one pickup fee will be charged if domestic Express Mail, International Express Mail, domestic Priority Mail, International Parcel Post, and/or domestic Parcel Post is picked up at the same time. No pickup fee will be charged when Global Express Guaranteed is picked up during a delivery stop or during a scheduled stop made to collect other mail not subject to a pickup fee. Pickup service is provided in accordance with DMM D010. A complete listing of participating Global Express Guaranteed Post Offices is available on the Web site at *http://www.usps.com/gxg.*

b. Customers may present their online shipments at the retail counter of any participating Global Express Guaranteed Post Office.

c. Customers using the online postage payment option may drop shipments in collection boxes served by a participating Global Express Guaranteed Post Office.

216.353 Acceptance of Online Shipments

For purposes of computing the delivery guarantee, postal acceptance of a Global Express Guaranteed item prepared online occurs when the shipment is received and scanned at a participating Global Express Guaranteed Post Office. Collection box deposit and carrier pickup do not constitute Postal Service acceptance of a Global Express Guaranteed shipment. Acceptance occurs when the shipment is brought back to the Post Office and the acceptance office performs a retail system scan to verify the weight and dimensions of the shipment. The customer will receive an email verification of the acceptance date, time, and weight, as well as a verification of the amount of postage applicable for the shipment.

216.36 Discounted Rates

216.361 Document Rates With Standard Web Discount

Weight not over (lbs.)	Rate group 1	Rate group 2	Rate group 3	Rate group 4	Rate group 5	Rate group 6	Rate group 7	Rate group 8
0.5	22.80	23.75	30.40	30.40	42.75	31.35	32.30	61.75
1	31.35	32.30	37.05	42.75	49.40	44.65	43.70	71.25

Weight not over (lbs.)	Rate group 1	Rate group 2	Rate group 3	Rate group 4	Rate group 5	Rate group 6	Rate group 7	Rate group 8
2	36.10	38.00	43.70	49.40	61.75	52.25	49.40	84.55
3	38.00	43.70	50.35	56.05	75.05	58.90	57.00	95.95
4	40.85	47.50	57.00	62.70	88.35	64.60	64.60	106.40
5	43.70	52.25	63.65	69.35	100.70	71.25	71.25	117.80
6	45.60	55.10	68.40	76.00	113.05	76.00	77.90	129.20
7	48.45	57.95	72.20	81.70	124.45	81.70	84.55	140.60
8	50.35	61.75	76.00	88.35	135.85	86.45	91.20	152.00
9	52.25	64.60	80.75	95.00	148.20	91.20	97.85	163.40
10	55.10	66.50	84.55	98.80	156.75	96.90	104.50	171.00
11	57.00	69.35	87.40	103.55	166.25	99.75	110.20	181.45
12	58.90	72.20	91.20	109.25	175.75	103.55	115.90	192.85
13	61.75	75.05	94.05	114.00	185.25	107.35	120.65	204.25
14	63.65	76.95	97.85	118.75	194.75	111.15	125.40	214.70
15	65.55	79.80	100.70	123.50	203.30	114.95	130.15	226.10
16	68.40	82.65	103.55	129.20	211.85	118.75	134.90	236.55
17	70.30	84.55	107.35	133.95	219.45	122.55	139.65	247.00
18	72.20	87.40	110.20	138.70	226.10	126.35	145.35	257.45
19	75.05	90.25	114.00	143.45	233.70	130.15	151.05	267.90
20	76.95	92.15	116.85	148.20	240.35	133.95	156.75	278.35
21	78.85	95.00	119.70	152.95	247.00	136.80	162.45	286.90
22	80.75	96.90	123.50	157.70	254.60	140.60	167.20	295.45
23	82.65	99.75	126.35	162.45	261.25	144.40	171.95	302.10
24	85.50	102.60	130.15	167.20	268.85	148.20	176.70	308.75
25	87.40	104.50	133.00	171.95	275.50	152.00	181.45	316.35
26	89.30	107.35	135.85	176.70	283.10	155.80	186.20	323.00
27	91.20	109.25	139.65	180.50	289.75	159.60	190.95	329.65
28	93.10	112.10	142.50	185.25	297.35	163.40	195.70	337.25
29	95.00	114.00	145.35	190.00	304.00	167.20	200.45	343.90
30	97.85	117.80	150.10	196.65	314.45	172.90	205.20	354.35
31	99.75	120.65	153.90	201.40	321.10	176.70	209.95	361.95
32	101.65	122.55	156.75	206.15	328.70	180.50	214.70	368.60
33	103.55	124.45	160.55	210.90	335.35	184.30	219.45	376.20
34	106.40	125.40	163.40	215.65	342.95	188.10	224.20	382.85
35	108.30	127.30	166.25	220.40	350.55	191.90	228.95	390.45
36	110.20	129.20	170.05	224.20	357.20	195.70	233.70	397.10
37	112.10	131.10	172.90	228.95	364.80	199.50	238.45	404.70
38	114.00	133.00	176.70	233.70	371.45	203.30	243.20	411.35
39	115.90	134.90	179.55	238.45	378.10	207.10	247.95	418.00
40	117.80	136.80	182.40	243.20	383.80	210.90	252.70	425.60
41	119.70	138.70	186.20	247.95	390.45	214.70	257.45	432.25
42	123.50	140.60	189.05	252.70	397.10	218.50	262.20	439.85
43	125.40	142.50	192.85	257.45	403.75	222.30	266.95	446.50
44	127.30	143.45	195.70	262.20	410.40	226.10	271.70	454.10
45	130.15	145.35	199.50	266.00	417.05	229.90	276.45	460.75
46	132.05	147.25	202.35	270.75	423.70	233.70	281.20	467.40
47	133.95	148.20	205.20	275.50	429.40	237.50	285.95	475.00
48	135.85	150.10	209.00	280.25	436.05	241.30	290.70	481.65
49	138.70	152.00	211.85	285.00	442.70	245.10	295.45	489.25
50	140.60	154.85	217.55	292.60	454.10	250.80	300.20	501.60
51	144.40	156.75	220.40	297.35	460.75	250.80	304.95	515.85
52	146.30	158.65	224.20	302.10	467.40	258.40	309.70	515.85
53	148.20	160.55	227.05	306.85	474.05	262.20	314.45	531.05
54	151.05	161.50	230.85	311.60	480.70	266.00	319.20	531.05
55	152.00	163.40	233.70	316.35	487.35	268.85	323.95	543.40
56	153.90	164.35	237.50	321.10	494.00	273.60	328.70	543.40
57	154.85	166.25	240.35	325.85	500.65	276.45	333.45	554.80
58	155.80	167.20	243.20	330.60	506.35	281.20	338.20	554.80
59	157.70	169.10	247.00	335.35	513.00	284.05	342.95	567.15
60	158.65	171.00	249.85	340.10	519.65	288.80	347.70	567.15
61	160.55	171.95	253.65	344.85	526.30	291.65	352.45	581.40
62	161.50	172.90	256.50	348.65	532.00	297.35	357.20	581.40
63	162.45	174.80	260.30	353.40	539.60	299.25	361.95	595.65
64	163.40	175.75	263.15	358.15	542.45	304.95	366.70	595.65
65	164.35	177.65	266.95	362.90	552.90	306.85	371.45	609.90
66	165.30	178.60	269.80	367.65	552.90	312.55	376.20	609.90
67	166.25	180.50	272.65	372.40	563.35	314.45	380.95	624.15
68	167.20	182.40	276.45	377.15	565.25	320.15	385.70	624.15
69	168.15	183.35	279.30	381.90	573.80	322.05	390.45	638.40
70	169.10	184.30	283.10	386.65	573.80	327.75	395.20	638.40

216.362 Non-Document Rates With Standard Web Discount

Weight not over (lbs.)	Rate group 1	Rate group 2	Rate group 3	Rate group 4	Rate group 5	Rate group 6	Rate group 7	Rate group 8
0.5								
1	34.20	36.10	41.80	45.60	56.05	49.40	52.25	77.90
2	38.95	42.75	48.45	52.25	68.40	57.00	55.10	91.20
3	41.80	48.45	55.10	60.80	81.70	63.65	59.85	103.55
4	44.65	52.25	61.75	67.45	95.00	69.35	66.50	114.00
5	47.50	57.00	68.40	74.10	107.35	76.00	73.15	127.30
6	49.40	59.85	73.15	80.75	119.70	80.75	79.80	138.70
7	52.25	62.70	76.95	86.45	131.10	86.45	86.45	150.10
8	54.15	67.45	81.70	93.10	142.50	91.20	93.10	161.50
9	56.05	70.30	86.45	99.75	154.85	95.95	99.75	172.90
10	58.90	73.15	90.25	105.45	168.15	101.65	106.40	180.50
11	60.80	76.00	95.00	110.20	177.65	106.40	112.10	195.70
12	62.70	78.85	98.80	115.90	187.15	110.20	116.85	207.10
13	65.55	81.70	101.65	120.65	196.65	114.00	122.55	218.50
14	67.45	83.60	105.45	125.40	206.15	117.80	127.30	228.95
15	69.35	86.45	108.30	130.15	217.55	124.45	132.05	240.35
16	72.20	89.30	111.15	135.85	226.10	128.25	136.80	250.80
17	74.10	92.15	114.95	140.60	233.70	132.05	141.55	261.25
18	76.00	95.00	117.80	145.35	240.35	135.85	147.25	271.70
19	78.85	97.85	121.60	150.10	247.95	139.65	152.95	282.15
20	82.65	101.65	124.45	156.75	254.60	143.45	158.65	292.60
21	84.55	104.50	127.30	161.50	261.25	146.30	164.35	301.15
22	86.45	106.40	131.10	166.25	268.85	150.10	169.10	309.70
23	88.35	109.25	133.95	171.00	275.50	153.90	173.85	316.35
24	91.20	112.10	137.75	175.75	283.10	157.70	178.60	323.00
25	93.10	114.00	140.60	180.50	289.75	161.50	183.35	330.60
26	95.00	115.90	145.35	185.25	297.35	165.30	188.10	337.25
27	96.90	116.85	149.15	189.05	304.00	169.10	192.85	343.90
28	98.80	119.70	152.00	193.80	311.60	172.90	197.60	351.50
29	100.70	121.60	154.85	198.55	318.25	176.70	202.35	358.15
30	103.55	125.40	159.60	205.20	328.70	182.40	207.10	368.60
31	105.45	128.25	163.40	209.95	335.35	186.20	211.85	376.20
32	107.35	130.15	166.25	214.70	342.95	190.00	216.60	382.85
33	109.25	132.05	170.05	219.45	349.60	193.80	221.35	390.45
34	112.10	133.95	172.90	224.20	357.20	197.60	226.10	397.10
35	114.00	135.85	175.75	228.95	364.80	201.40	230.85	409.45
36	115.90	137.75	179.55	232.75	371.45	205.20	235.60	416.10
37	117.80	139.65	182.40	237.50	379.05	209.00	240.35	423.70
38	119.70	141.55	186.20	242.25	385.70	212.80	245.10	430.35
39	121.60	143.45	189.05	247.00	392.35	216.60	249.85	437.00
40	123.50	145.35	191.90	254.60	398.05	220.40	254.60	444.60
41	125.40	147.25	195.70	259.35	404.70	224.20	259.35	451.25
42	129.20	149.15	198.55	264.10	411.35	228.00	264.10	458.85
43	131.10	151.05	202.35	268.85	418.00	231.80	268.85	465.50
44	133.00	152.00	205.20	273.60	424.65	235.60	273.60	473.10
45	135.85	153.90	209.00	280.25	431.30	239.40	278.35	479.75
46	137.75	155.80	211.85	285.00	437.95	243.20	283.10	481.65
47	139.65	156.75	214.70	289.75	443.65	247.00	287.85	489.25
48	141.55	158.65	218.50	294.50	450.30	250.80	292.60	495.90
49	143.45	160.55	221.35	299.25	456.95	254.60	297.35	503.50
50	144.40	163.40	227.05	304.00	468.35	260.30	302.10	515.85
51	148.20	165.30	229.90	308.75	473.10	262.20	306.85	530.10
52	150.10	167.20	233.70	313.50	479.75	267.90	311.60	530.10
53	152.00	169.10	236.55	318.25	486.40	271.70	316.35	545.30
54	154.85	170.05	240.35	323.00	493.05	275.50	321.10	545.30
55	155.80	171.95	243.20	327.75	499.70	278.35	325.85	557.65
56	157.70	172.90	247.00	332.50	506.35	283.10	330.60	557.65
57	158.65	174.80	249.85	337.25	513.00	285.95	335.35	569.05
58	159.60	175.75	252.70	342.00	518.70	290.70	340.10	569.05
59	161.50	177.65	256.50	346.75	525.35	293.55	344.85	581.40
60	161.50	179.55	259.35	351.50	532.00	298.30	349.60	581.40
61	163.40	183.35	263.15	356.25	538.65	301.15	354.35	595.65
62	164.35	184.30	266.00	360.05	544.35	306.85	359.10	595.65
63	165.30	186.20	269.80	364.80	551.95	308.75	363.85	609.90
64	166.25	187.15	272.65	369.55	554.80	314.45	368.60	609.90
65	167.20	189.05	276.45	374.30	565.25	316.35	373.35	624.15
66	168.15	190.00	279.30	379.05	565.25	322.05	378.10	624.15
67	169.10	191.90	282.15	383.80	575.70	323.95	382.85	638.40
68	170.05	193.80	285.95	388.55	577.60	329.65	387.60	638.40
69	171.00	194.75	288.80	393.30	586.15	331.55	392.35	652.65
70	171.95	195.70	292.60	398.05	586.15	337.25	397.10	652.65

216.363 Document Rates With 5-Piece Discount

Weight not over (lbs.)	Rate group 1	Rate group 2	Rate group 3	Rate group 4	Rate group 5	Rate group 6	Rate group 7	Rate group 8
0.5	20.48	20.50	23.08	23.40	31.50	27.10	30.50	45.50
1	25.41	24.80	27.91	31.50	36.40	32.90	34.50	52.50
2	29.26	28.00	31.74	36.40	45.50	38.50	39.00	62.30
3	30.80	32.20	36.57	41.30	55.30	43.40	45.00	70.70
4	33.11	35.00	41.40	46.20	65.10	47.60	51.00	78.40
5	35.42	38.50	46.23	51.10	74.20	52.50	56.25	86.80
6	36.96	40.60	49.68	56.00	83.30	56.00	61.50	95.20
7	39.27	42.70	52.44	60.20	91.70	60.20	66.75	103.60
8	40.81	45.50	55.20	65.10	100.10	63.70	72.00	112.00
9	42.35	47.60	58.65	70.00	109.20	67.20	77.25	120.40
10	44.66	49.00	61.41	72.80	115.50	71.40	82.50	126.00
11	46.20	51.10	63.48	76.30	122.50	73.50	87.00	133.70
12	47.74	53.20	66.24	80.50	129.50	76.30	91.50	142.10
13	50.05	55.30	68.31	84.00	136.50	79.10	95.25	150.50
14	51.59	56.70	71.07	87.50	143.50	81.90	99.00	158.20
15	53.13	58.80	73.14	91.00	149.80	84.70	102.75	166.60
16	55.44	60.90	75.21	95.20	156.10	87.50	106.50	174.30
17	56.98	62.30	77.97	98.70	161.70	90.30	110.25	182.00
18	58.52	64.40	80.04	102.20	166.60	93.10	114.75	189.70
19	61.83	67.50	82.80	105.70	172.20	95.90	119.25	197.40
20	63.37	68.90	85.87	109.20	177.10	98.70	123.75	205.10
21	64.91	71.00	87.94	112.70	182.00	100.80	128.25	211.40
22	66.45	72.40	90.70	116.20	187.60	103.60	132.00	217.70
23	67.99	74.50	92.77	119.70	192.50	106.40	135.75	222.60
24	70.30	76.60	95.53	123.20	198.10	109.20	139.50	227.50
25	72.84	79.00	98.60	126.70	203.00	112.00	143.25	233.10
26	74.38	81.10	100.67	130.20	208.60	114.80	147.00	238.00
27	76.92	83.50	103.43	133.00	213.50	117.60	150.75	242.90
28	78.46	85.60	105.50	136.50	219.10	120.40	154.50	248.50
29	80.00	87.00	107.57	140.00	224.00	123.20	158.25	253.40
30	82.31	89.80	111.02	144.90	231.70	127.40	162.00	261.10
31	84.85	92.90	114.78	148.40	236.60	130.20	165.75	266.70
32	86.39	94.30	116.85	151.90	242.20	133.00	169.50	271.60
33	88.93	96.70	119.61	155.40	247.10	135.80	173.25	277.20
34	91.24	97.40	121.68	158.90	252.70	138.60	177.00	282.10
35	93.78	99.80	123.75	162.40	258.30	141.40	180.75	287.70
36	95.32	101.20	127.51	165.20	263.20	144.20	184.50	292.60
37	97.86	103.60	129.58	168.70	268.80	147.00	188.25	298.20
38	99.40	105.00	132.34	172.20	273.70	149.80	192.00	303.10
39	101.94	107.40	134.41	175.70	278.60	152.60	195.75	308.00
40	103.48	108.80	136.48	179.20	282.80	155.40	199.50	313.60
41	106.02	111.20	140.24	182.70	287.70	158.20	203.25	318.50
42	109.10	112.60	142.31	186.20	292.60	161.00	207.00	324.10
43	110.64	114.00	145.07	189.70	297.50	163.80	210.75	329.00
44	112.18	114.70	148.14	193.20	302.40	166.60	214.50	334.60
45	115.49	117.10	151.90	196.00	307.30	169.40	218.25	339.50
46	117.03	118.50	154.97	199.50	312.20	172.20	222.00	344.40
47	118.57	119.20	158.04	203.00	316.40	175.00	225.75	350.00
48	121.11	121.60	161.80	206.50	321.30	177.80	229.50	354.90
49	123.42	123.00	163.87	210.00	326.20	180.60	233.25	360.50
50	125.96	126.10	168.01	215.60	334.60	184.80	237.00	369.60
51	129.04	127.50	170.08	219.10	339.50	184.80	240.75	380.10
52	130.58	129.90	172.84	222.60	344.40	190.40	244.50	380.10
53	132.12	132.30	174.91	226.10	349.30	193.20	248.25	391.30
54	134.43	134.00	177.67	229.60	354.20	196.00	252.00	391.30
55	136.20	136.40	179.74	233.10	359.10	198.10	255.75	400.40
56	137.74	138.10	182.50	236.60	364.00	201.60	259.50	400.40
57	140.51	140.50	185.57	240.10	368.90	203.70	263.25	408.80
58	142.28	142.20	188.64	243.60	373.10	207.20	267.00	408.80
59	144.82	144.60	191.40	247.10	378.00	209.30	270.75	417.90
60	146.59	147.00	194.47	250.60	382.90	212.80	274.50	417.90
61	149.13	148.70	197.23	254.10	387.80	214.90	278.25	428.40
62	150.90	150.40	199.30	256.90	392.00	219.10	282.00	428.40
63	152.67	152.80	202.06	260.40	397.60	220.50	285.75	438.90
64	154.44	154.50	206.13	263.90	399.70	224.70	289.50	438.90
65	156.21	156.90	208.89	267.40	407.40	226.10	293.25	449.40
66	157.98	158.60	210.96	270.90	407.40	230.30	297.00	449.40
67	159.75	161.00	215.03	274.40	415.10	231.70	300.75	459.90
68	161.52	163.40	217.79	277.90	416.50	235.90	304.50	459.90
69	164.29	165.10	219.86	281.40	422.80	237.30	308.25	470.40
70	166.06	166.80	222.62	284.90	422.80	241.50	312.00	470.40

216.364 Non-Document Rates With 5-Piece Discount

Weight not over (lbs.)	Rate group 1	Rate group 2	Rate group 3	Rate group 4	Rate group 5	Rate group 6	Rate group 7	Rate group 8
0.5								
1	27.72	28.60	34.04	36.60	46.30	40.40	49.25	59.04
2	31.57	31.50	36.66	39.50	52.40	43.00	51.50	69.12
3	33.88	35.70	39.28	44.80	60.20	46.90	55.25	78.48
4	36.19	38.50	42.90	49.70	70.00	51.10	59.50	86.40
5	38.50	42.00	47.52	54.60	79.10	56.00	62.75	96.48
6	40.04	44.10	50.82	59.50	88.20	59.50	68.00	105.12
7	42.35	46.20	53.46	63.70	96.60	63.70	71.25	113.76
8	43.89	49.70	56.76	68.60	105.00	67.20	75.50	122.40
9	45.43	51.80	60.06	73.50	114.10	70.70	78.75	131.04
10	47.74	53.90	62.70	77.70	123.90	74.90	84.00	136.80
11	49.28	56.00	66.00	81.20	130.90	78.40	88.50	148.32
12	50.82	58.10	68.64	85.40	137.90	81.20	92.25	156.96
13	53.13	60.20	70.62	88.90	144.90	84.00	96.75	165.60
14	54.67	61.60	73.26	92.40	151.90	86.80	100.50	173.52
15	56.21	63.70	75.24	95.90	160.30	91.70	104.25	182.16
16	58.52	65.80	77.22	100.10	166.60	94.50	108.00	190.08
17	60.06	67.90	79.86	103.60	172.20	97.30	111.75	198.00
18	61.60	70.00	81.84	107.10	177.10	100.10	116.25	205.92
19	65.91	74.10	84.48	110.60	182.70	102.90	120.75	213.84
20	68.99	76.90	88.46	115.50	187.60	105.70	125.25	221.76
21	70.53	79.00	90.44	119.00	192.50	107.80	129.75	228.24
22	74.07	82.40	95.08	122.50	198.10	110.60	133.50	234.72
23	75.61	84.50	97.06	126.00	203.00	113.40	137.25	239.76
24	78.92	87.60	100.70	129.50	208.60	116.20	141.00	244.80
25	80.46	89.00	102.68	133.00	213.50	119.00	144.75	250.56
26	83.00	91.40	106.98	136.50	219.10	121.80	148.50	255.60
27	84.54	92.10	109.62	139.30	224.00	124.60	152.25	260.64
28	87.08	95.20	112.60	142.80	229.60	127.40	156.00	266.40
29	88.62	96.60	114.58	146.30	234.50	130.20	159.75	271.44
30	90.93	99.40	117.88	151.20	242.20	134.40	163.50	279.36
31	92.47	101.50	120.52	154.70	247.10	137.20	167.25	285.12
32	94.01	102.90	122.50	158.20	252.70	140.00	171.00	290.16
33	97.55	106.30	127.14	161.70	257.60	142.80	174.75	295.92
34	99.86	107.70	129.12	165.20	263.20	145.60	178.50	300.96
35	101.40	109.10	131.10	168.70	268.80	148.40	182.25	310.32
36	102.94	110.50	133.74	171.50	273.70	151.20	186.00	315.36
37	104.48	111.90	135.72	175.00	279.30	154.00	189.75	321.12
38	106.02	113.30	138.36	178.50	284.20	156.80	193.50	326.16
39	107.56	114.70	140.34	182.00	289.10	159.60	197.25	331.20
40	112.10	119.10	145.32	187.60	293.30	162.40	201.00	336.96
41	113.64	120.50	147.96	191.10	298.20	165.20	204.75	342.00
42	118.72	123.90	151.94	194.60	303.10	168.00	208.50	347.76
43	120.26	125.30	154.58	198.10	308.00	170.80	212.25	352.80
44	121.80	126.00	156.56	201.60	312.90	173.60	216.00	358.56
45	124.11	127.40	159.20	206.50	317.80	176.40	219.75	363.60
46	126.65	129.80	162.18	210.00	322.70	179.20	223.50	365.04
47	128.19	130.50	164.16	213.50	326.90	182.00	227.25	370.80
48	131.73	133.90	168.80	217.00	331.80	184.80	231.00	375.84
49	133.27	135.30	170.78	220.50	336.70	187.60	234.75	381.60
50	134.04	137.40	174.74	224.00	345.10	191.80	238.50	390.96
51	137.12	138.80	176.72	227.50	348.60	193.20	242.25	401.76
52	138.66	140.20	179.36	231.00	353.50	197.40	246.00	401.76
53	142.20	143.60	183.34	234.50	358.40	200.20	249.75	413.28
54	144.51	144.30	185.98	238.00	363.30	203.00	253.50	413.28
55	145.28	145.70	187.96	241.50	368.20	205.10	257.25	422.64
56	146.82	146.40	190.60	245.00	373.10	208.60	261.00	422.64
57	148.59	148.80	193.58	248.50	378.00	210.70	264.75	431.28
58	149.36	149.50	195.56	252.00	382.20	214.20	268.50	431.28
59	150.90	150.90	198.20	255.50	387.10	216.30	272.25	440.64
60	150.90	152.30	200.18	259.00	392.00	219.80	276.00	440.64
61	154.44	157.10	204.82	262.50	396.90	221.90	279.75	451.44
62	155.21	157.80	206.80	265.30	401.10	226.10	283.50	451.44
63	155.98	159.20	209.44	268.80	406.70	227.50	287.25	462.24
64	158.75	161.90	213.42	272.30	408.80	231.70	291.00	462.24
65	159.52	163.30	216.06	275.80	416.50	233.10	294.75	473.04
66	160.29	164.00	218.04	279.30	416.50	237.30	298.50	473.04
67	161.06	165.40	220.02	282.80	424.20	238.70	302.25	483.84
68	162.83	167.80	223.66	286.30	425.60	242.90	306.00	483.84
69	163.60	168.50	225.64	289.80	431.90	244.30	309.75	494.64
70	164.37	169.20	228.28	293.30	431.90	248.50	313.50	494.64

216.365 Document Rates With 12-Piece Discount

Weight not over (lbs.)	Rate group 1	Rate group 2	Rate group 3	Rate group 4	Rate group 5	Rate group 6	Rate group 7	Rate group 8
0.5	20.00	20.00	22.44	22.76	30.60	26.44	29.48	44.20
1	24.75	24.12	27.13	30.60	35.36	31.96	33.12	51.00
2	28.50	27.20	30.82	35.36	44.20	37.40	37.44	60.52
3	30.00	31.28	35.51	40.12	53.72	42.16	43.20	68.68
4	32.25	34.00	40.20	44.88	63.24	46.24	48.96	76.16
5	34.50	37.40	44.89	49.64	72.08	51.00	54.00	84.32
6	36.00	39.44	48.24	54.40	80.92	54.40	59.04	92.48
7	38.25	41.48	50.92	58.48	89.08	58.48	64.08	100.64
8	39.75	44.20	53.60	63.24	97.24	61.88	69.12	108.80
9	41.25	46.24	56.95	68.00	106.08	65.28	74.16	116.96
10	43.50	47.60	59.63	70.72	112.20	69.36	79.20	122.40
11	45.00	49.64	61.64	74.12	119.00	71.40	83.52	129.88
12	46.50	51.68	64.32	78.20	125.80	74.12	87.84	138.04
13	48.75	53.72	66.33	81.60	132.60	76.84	91.44	146.20
14	50.25	55.08	69.01	85.00	139.40	79.56	95.04	153.68
15	51.75	57.12	71.02	88.40	145.52	82.28	98.64	161.84
16	54.00	59.16	73.03	92.48	151.64	85.00	102.24	169.32
17	55.50	60.52	75.71	95.88	157.08	87.72	105.84	176.80
18	57.00	62.56	77.72	99.28	161.84	90.44	110.16	184.28
19	60.25	65.60	80.40	102.68	167.28	93.16	114.48	191.76
20	61.75	66.96	83.41	106.08	172.04	95.88	118.80	199.24
21	63.25	69.00	85.42	109.48	176.80	97.92	123.12	205.36
22	64.75	70.36	88.10	112.88	182.24	100.64	126.72	211.48
23	66.25	72.40	90.11	116.28	187.00	103.36	130.32	216.24
24	68.50	74.44	92.79	119.68	192.44	106.08	133.92	221.00
25	71.00	76.80	95.80	123.08	197.20	108.80	137.52	226.44
26	72.50	78.84	97.81	126.48	202.64	111.52	141.12	231.20
27	75.00	81.20	100.49	129.20	207.40	114.24	144.72	235.96
28	76.50	83.24	102.50	132.60	212.84	116.96	148.32	241.40
29	78.00	84.60	104.51	136.00	217.60	119.68	151.92	246.16
30	80.25	87.32	107.86	140.76	225.08	123.76	155.52	253.64
31	82.75	90.36	111.54	144.16	229.84	126.48	159.12	259.08
32	84.25	91.72	113.55	147.56	235.28	129.20	162.72	263.84
33	86.75	94.08	116.23	150.96	240.04	131.92	166.32	269.28
34	89.00	94.76	118.24	154.36	245.48	134.64	169.92	274.04
35	91.50	97.12	120.25	157.76	250.92	137.36	173.52	279.48
36	93.00	98.48	123.93	160.48	255.68	140.08	177.12	284.24
37	95.50	100.84	125.94	163.88	261.12	142.80	180.72	289.68
38	97.00	102.20	128.62	167.28	265.88	145.52	184.32	294.44
39	99.50	104.56	130.63	170.68	270.64	148.24	187.92	299.20
40	101.00	105.92	132.64	174.08	274.72	150.96	191.52	304.64
41	103.50	108.28	136.32	177.48	279.48	153.68	195.12	309.40
42	106.50	109.64	138.33	180.88	284.24	156.40	198.72	314.84
43	108.00	111.00	141.01	184.28	289.00	159.12	202.32	319.60
44	109.50	111.68	144.02	187.68	293.76	161.84	205.92	325.04
45	112.75	114.04	147.70	190.40	298.52	164.56	209.52	329.80
46	114.25	115.40	150.71	193.80	303.28	167.28	213.12	334.56
47	115.75	116.08	153.72	197.20	307.36	170.00	216.72	340.00
48	118.25	118.44	157.40	200.60	312.12	172.72	220.32	344.76
49	120.50	119.80	159.41	204.00	316.88	175.44	223.92	350.20
50	123.00	122.84	163.43	209.44	325.04	179.52	227.52	359.04
51	126.00	124.20	165.44	212.84	329.80	179.52	231.12	369.24
52	127.50	126.56	168.12	216.24	334.56	184.96	234.72	369.24
53	129.00	128.92	170.13	219.64	339.32	187.68	238.32	380.12
54	131.25	130.60	172.81	223.04	344.08	190.40	241.92	380.12
55	133.00	132.96	174.82	226.44	348.84	192.44	245.52	388.96
56	134.50	134.64	177.50	229.84	353.60	195.84	249.12	388.96
57	137.25	137.00	180.51	233.24	358.36	197.88	252.72	397.12
58	139.00	138.68	183.52	236.64	362.44	201.28	256.32	397.12
59	141.50	141.04	186.20	240.04	367.20	203.32	259.92	405.96
60	143.25	143.40	189.21	243.44	371.96	206.72	263.52	405.96
61	145.75	145.08	191.89	246.84	376.72	208.76	267.12	416.16
62	147.50	146.76	193.90	249.56	380.80	212.84	270.72	416.16
63	149.25	149.12	196.58	252.96	386.24	214.20	274.32	426.36
64	151.00	150.80	200.59	256.36	388.28	218.28	277.92	426.36
65	152.75	153.16	203.27	259.76	395.76	219.64	281.52	436.56
66	154.50	154.84	205.28	263.16	395.76	223.72	285.12	436.56
67	156.25	157.20	209.29	266.56	403.24	225.08	288.72	446.76
68	158.00	159.56	211.97	269.96	404.60	229.16	292.32	446.76
69	160.75	161.24	213.98	273.36	410.72	230.52	295.92	456.96
70	162.50	162.92	216.66	276.76	410.72	234.60	299.52	456.96

216.366 Non-Document Rates With 12-Piece Discount

Weight not over (lbs.)	Rate group 1	Rate group 2	Rate group 3	Rate group 4	Rate group 5	Rate group 6	Rate group 7	Rate group 8
0.5								
1	27.00	27.46	33.16	34.20	43.35	37.28	45.40	55.76
2	30.75	30.15	35.64	36.75	48.80	39.40	47.44	65.28
3	33.00	34.17	38.12	41.60	55.90	42.88	50.84	74.12
4	35.25	36.85	41.60	46.15	65.00	46.72	54.60	81.60
5	37.50	40.20	46.08	50.70	73.45	51.20	57.36	91.12
6	39.00	42.21	49.28	55.25	81.90	54.40	62.12	99.28
7	41.25	44.22	51.84	59.15	89.70	58.24	64.88	107.44
8	42.75	47.57	55.04	63.70	97.50	61.44	68.64	115.60
9	44.25	49.58	58.24	68.25	105.95	64.64	71.40	123.76
10	46.50	51.59	60.80	72.15	115.05	68.48	76.16	129.20
11	48.00	53.60	64.00	75.40	121.55	71.68	80.24	140.08
12	49.50	55.61	66.56	79.30	128.05	74.24	83.64	148.24
13	51.75	57.62	68.48	82.55	134.55	76.80	87.72	156.40
14	53.25	58.96	71.04	85.80	141.05	79.36	91.12	163.88
15	54.75	60.97	72.96	89.05	148.85	83.84	94.52	172.04
16	57.00	62.98	74.88	92.95	154.70	86.40	97.92	179.52
17	58.50	64.99	77.44	96.20	159.90	88.96	101.32	187.00
18	60.00	67.00	79.36	99.45	164.45	91.52	105.40	194.48
19	64.25	71.01	81.92	102.70	169.65	94.08	109.48	201.96
20	67.25	73.69	85.84	107.25	174.20	96.64	113.56	209.44
21	68.75	75.70	87.76	110.50	178.75	98.56	117.64	215.56
22	72.25	79.04	92.32	113.75	183.95	101.12	121.04	221.68
23	73.75	81.05	94.24	117.00	188.50	103.68	124.44	226.44
24	77.00	84.06	97.80	120.25	193.70	106.24	127.84	231.20
25	78.50	85.40	99.72	123.50	198.25	108.80	131.24	236.64
26	81.00	87.74	103.92	126.75	203.45	111.36	134.64	241.40
27	82.50	88.41	106.48	129.35	208.00	113.92	138.04	246.16
28	85.00	91.42	109.40	132.60	213.20	116.48	141.44	251.60
29	86.50	92.76	111.32	135.85	217.75	119.04	144.84	256.36
30	88.75	95.44	114.52	140.40	224.90	122.88	148.24	263.84
31	90.25	97.45	117.08	143.65	229.45	125.44	151.64	269.28
32	91.75	98.79	119.00	146.90	234.65	128.00	155.04	274.04
33	95.25	102.13	123.56	150.15	239.20	130.56	158.44	279.48
34	97.50	103.47	125.48	153.40	244.40	133.12	161.84	284.24
35	99.00	104.81	127.40	156.65	249.60	135.68	165.24	293.08
36	100.50	106.15	129.96	159.25	254.15	138.24	168.64	297.84
37	102.00	107.49	131.88	162.50	259.35	140.80	172.04	303.28
38	103.50	108.83	134.44	165.75	263.90	143.36	175.44	308.04
39	105.00	110.17	136.36	169.00	268.45	145.92	178.84	312.80
40	109.50	114.51	141.28	174.20	272.35	148.48	182.24	318.24
41	111.00	115.85	143.84	177.45	276.90	151.04	185.64	323.00
42	116.00	119.19	147.76	180.70	281.45	153.60	189.04	328.44
43	117.50	120.53	150.32	183.95	286.00	156.16	192.44	333.20
44	119.00	121.20	152.24	187.20	290.55	158.72	195.84	338.64
45	121.25	122.54	154.80	191.75	295.10	161.28	199.24	343.40
46	123.75	124.88	157.72	195.00	299.65	163.84	202.64	344.76
47	125.25	125.55	159.64	198.25	303.55	166.40	206.04	350.20
48	128.75	128.89	164.20	201.50	308.10	168.96	209.44	354.96
49	130.25	130.23	166.12	204.75	312.65	171.52	212.84	360.40
50	131.00	132.24	169.96	208.00	320.45	175.36	216.24	369.24
51	134.00	133.58	171.88	211.25	323.70	176.64	219.64	379.44
52	135.50	134.92	174.44	214.50	328.25	180.48	223.04	379.44
53	139.00	138.26	178.36	217.75	332.80	183.04	226.44	390.32
54	141.25	138.93	180.92	221.00	337.35	185.60	229.84	390.32
55	142.00	140.27	182.84	224.25	341.90	187.52	233.24	399.16
56	143.50	140.94	185.40	227.50	346.45	190.72	236.64	399.16
57	145.25	143.28	188.32	230.75	351.00	192.64	240.04	407.32
58	146.00	143.95	190.24	234.00	354.90	195.84	243.44	407.32
59	147.50	145.29	192.80	237.25	359.45	197.76	246.84	416.16
60	147.50	146.63	194.72	240.50	364.00	200.96	250.24	416.16
61	151.00	151.31	199.28	243.75	368.55	202.88	253.64	426.36
62	151.75	151.98	201.20	246.35	372.45	206.72	257.04	426.36
63	152.50	153.32	203.76	249.60	377.65	208.00	260.44	436.56
64	155.25	155.99	207.68	252.85	379.60	211.84	263.84	436.56
65	156.00	157.33	210.24	256.10	386.75	213.12	267.24	446.76
66	156.75	158.00	212.16	259.35	386.75	216.96	270.64	446.76
67	157.50	159.34	214.08	262.60	393.90	218.24	274.04	456.96
68	159.25	161.68	217.64	265.85	395.20	222.08	277.44	456.96
69	160.00	162.35	219.56	269.10	401.05	223.36	280.84	467.16
70	160.75	163.02	222.12	272.35	401.05	227.20	284.24	467.16

216.367 Document Rates With 20-Piece Discount

Weight not over (lbs.)	Rate group 1	Rate group 2	Rate group 3	Rate group 4	Rate group 5	Rate group 6	Rate group 7	Rate group 8
0.5	19.52	19.25	21.80	21.80	29.25	25.45	28.80	42.25
1	24.09	23.10	26.35	29.25	33.80	30.55	32.20	48.75
2	27.74	26.00	29.90	33.80	42.25	35.75	36.40	57.85
3	29.20	29.90	34.45	38.35	51.35	40.30	42.00	65.65
4	31.39	32.50	39.00	42.90	60.45	44.20	47.60	72.80
5	33.58	35.75	43.55	47.45	68.90	48.75	52.50	80.60
6	35.04	37.70	46.80	52.00	77.35	52.00	57.40	88.40
7	37.23	39.65	49.40	55.90	85.15	55.90	62.30	96.20
8	38.69	42.25	52.00	60.45	92.95	59.15	67.20	104.00
9	40.15	44.20	55.25	65.00	101.40	62.40	72.10	111.80
10	42.34	45.50	57.85	67.60	107.25	66.30	77.00	117.00
11	43.80	47.45	59.80	70.85	113.75	68.25	81.20	124.15
12	45.26	49.40	62.40	74.75	120.25	70.85	85.40	131.95
13	47.45	51.35	64.35	78.00	126.75	73.45	88.90	139.75
14	48.91	52.65	66.95	81.25	133.25	76.05	92.40	146.90
15	50.37	54.60	68.90	84.50	139.10	78.65	95.90	154.70
16	52.56	56.55	70.85	88.40	144.95	81.25	99.40	161.85
17	54.02	57.85	73.45	91.65	150.15	83.85	102.90	169.00
18	55.48	59.80	75.40	94.90	154.70	86.45	107.10	176.15
19	58.67	62.75	78.00	98.15	159.90	89.05	111.30	183.30
20	60.13	64.05	80.95	101.40	164.45	91.65	115.50	190.45
21	61.59	66.00	82.90	104.65	169.00	93.60	119.70	196.30
22	63.05	67.30	85.50	107.90	174.20	96.20	123.20	202.15
23	64.51	69.25	87.45	111.15	178.75	98.80	126.70	206.70
24	66.70	71.20	90.05	114.40	183.95	101.40	130.20	211.25
25	69.16	73.50	93.00	117.65	188.50	104.00	133.70	216.45
26	70.62	75.45	94.95	120.90	193.70	106.60	137.20	221.00
27	73.08	77.75	97.55	123.50	198.25	109.20	140.70	225.55
28	74.54	79.70	99.50	126.75	203.45	111.80	144.20	230.75
29	76.00	81.00	101.45	130.00	208.00	114.40	147.70	235.30
30	78.19	83.60	104.70	134.55	215.15	118.30	151.20	242.45
31	80.65	86.55	108.30	137.80	219.70	120.90	154.70	247.65
32	82.11	87.85	110.25	141.05	224.90	123.50	158.20	252.20
33	84.57	90.15	112.85	144.30	229.45	126.10	161.70	257.40
34	86.76	90.80	114.80	147.55	234.65	128.70	165.20	261.95
35	89.22	93.10	116.75	150.80	239.85	131.30	168.70	267.15
36	90.68	94.40	120.35	153.40	244.40	133.90	172.20	271.70
37	93.14	96.70	122.30	156.65	249.60	136.50	175.70	276.90
38	94.60	98.00	124.90	159.90	254.15	139.10	179.20	281.45
39	97.06	100.30	126.85	163.15	258.70	141.70	182.70	286.00
40	98.52	101.60	128.80	166.40	262.60	144.30	186.20	291.20
41	100.98	103.90	132.40	169.65	267.15	146.90	189.70	295.75
42	103.90	105.20	134.35	172.90	271.70	149.50	193.20	300.95
43	105.36	106.50	136.95	176.15	276.25	152.10	196.70	305.50
44	106.82	107.15	139.90	179.40	280.80	154.70	200.20	310.70
45	110.01	109.45	143.50	182.00	285.35	157.30	203.70	315.25
46	111.47	110.75	146.45	185.25	289.90	159.90	207.20	319.80
47	112.93	111.40	149.40	188.50	293.80	162.50	210.70	325.00
48	115.39	113.70	153.00	191.75	298.35	165.10	214.20	329.55
49	117.58	115.00	154.95	195.00	302.90	167.70	217.70	334.75
50	120.04	117.95	158.85	200.20	310.70	171.60	221.20	343.20
51	122.96	119.25	160.80	203.45	315.25	171.60	224.70	352.95
52	124.42	121.55	163.40	206.70	319.80	176.80	228.20	352.95
53	125.88	123.85	165.35	209.95	324.35	179.40	231.70	363.35
54	128.07	125.50	167.95	213.20	328.90	182.00	235.20	363.35
55	129.80	127.80	169.90	216.45	333.45	183.95	238.70	371.80
56	131.26	129.45	172.50	219.70	338.00	187.20	242.20	371.80
57	133.99	131.75	175.45	222.95	342.55	189.15	245.70	379.60
58	135.72	133.40	178.40	226.20	346.45	192.40	249.20	379.60
59	138.18	135.70	181.00	229.45	351.00	194.35	252.70	388.05
60	139.91	138.00	183.95	232.70	355.55	197.60	256.20	388.05
61	142.37	139.65	186.55	235.95	360.10	199.55	259.70	397.80
62	144.10	141.30	188.50	238.55	364.00	203.45	263.20	397.80
63	145.83	143.60	191.10	241.80	369.20	204.75	266.70	407.55
64	147.56	145.25	195.05	245.05	371.15	208.65	270.20	407.55
65	149.29	147.55	197.65	248.30	378.30	209.95	273.70	417.30
66	151.02	149.20	199.60	251.55	378.30	213.85	277.20	417.30
67	152.75	151.50	203.55	254.80	385.45	215.15	280.70	427.05
68	154.48	153.80	206.15	258.05	386.75	219.05	284.20	427.05
69	157.21	155.45	208.10	261.30	392.60	220.35	287.70	436.80
70	158.94	157.10	210.70	264.55	392.60	224.25	291.20	436.80

216.368 Non-Document Rates With 20-Piece Discount

Weight not over (lbs.)	Rate group 1	Rate group 2	Rate group 3	Rate group 4	Rate group 5	Rate group 6	Rate group 7	Rate group 8
0.5								
1	26.28	26.70	32.28	33.76	41.58	36.24	43.75	53.30
2	29.93	29.25	34.62	34.10	44.64	38.20	45.70	62.40
3	32.12	33.15	37.96	39.68	53.32	41.54	48.95	70.85
4	34.31	35.75	40.30	44.02	62.00	45.26	52.50	78.00
5	36.50	39.00	44.64	48.36	70.06	49.60	55.05	87.10
6	37.96	40.95	47.74	52.70	78.12	52.70	59.60	94.90
7	40.15	42.90	50.22	56.42	85.56	56.42	62.15	102.70
8	41.61	46.15	53.32	60.76	93.00	59.52	65.70	110.50
9	43.07	48.10	56.42	65.10	101.06	62.62	68.25	118.30
10	45.26	50.05	58.90	68.82	109.74	66.34	72.80	123.50
11	46.72	52.00	62.00	71.92	115.94	69.44	76.70	133.90
12	48.18	53.95	64.48	75.64	122.14	71.92	79.95	141.70
13	50.37	55.90	66.34	78.74	128.34	74.40	83.85	149.50
14	51.83	57.20	68.82	81.84	134.54	76.88	87.10	156.65
15	53.29	59.15	70.68	84.94	141.98	81.22	90.35	164.45
16	55.48	61.10	72.54	88.66	147.56	83.70	93.60	171.60
17	56.94	63.05	75.02	91.76	152.52	86.18	96.85	178.75
18	58.40	65.00	76.88	94.86	156.86	88.66	100.75	185.90
19	62.59	68.95	79.36	97.96	161.82	91.14	104.65	193.05
20	65.51	71.55	83.22	102.30	166.16	93.62	108.55	200.20
21	66.97	73.50	85.08	105.40	170.50	95.48	112.45	206.05
22	70.43	76.80	89.56	108.50	175.46	97.96	115.70	211.90
23	71.89	78.75	91.42	111.60	179.80	100.44	118.95	216.45
24	75.08	81.70	94.90	114.70	184.76	102.92	122.20	221.00
25	76.54	83.00	96.76	117.80	189.10	105.40	125.45	226.20
26	79.00	85.30	100.86	120.90	194.06	107.88	128.70	230.75
27	80.46	85.95	103.34	123.38	198.40	110.36	131.95	235.30
28	82.92	88.90	106.20	126.48	203.36	112.84	135.20	240.50
29	84.38	90.20	108.06	129.58	207.70	115.32	138.45	245.05
30	86.57	92.80	111.16	133.92	214.52	119.04	141.70	252.20
31	88.03	94.75	113.64	137.02	218.86	121.52	144.95	257.40
32	89.49	96.05	115.50	140.12	223.82	124.00	148.20	261.95
33	92.95	99.35	119.98	143.22	228.16	126.48	151.45	267.15
34	95.14	100.65	121.84	146.32	233.12	128.96	154.70	271.70
35	96.60	101.95	123.70	149.42	238.08	131.44	157.95	280.15
36	98.06	103.25	126.18	151.90	242.42	133.92	161.20	284.70
37	99.52	104.55	128.04	155.00	247.38	136.40	164.45	289.90
38	100.98	105.85	130.52	158.10	251.72	138.88	167.70	294.45
39	102.44	107.15	132.38	161.20	256.06	141.36	170.95	299.00
40	106.90	111.45	137.24	166.16	259.78	143.84	174.20	304.20
41	108.36	112.75	139.72	169.26	264.12	146.32	177.45	308.75
42	113.28	116.05	143.58	172.36	268.46	148.80	180.70	313.95
43	114.74	117.35	146.06	175.46	272.80	151.28	183.95	318.50
44	116.20	118.00	147.92	178.56	277.14	153.76	187.20	323.70
45	118.39	119.30	150.40	182.90	281.48	156.24	190.45	328.25
46	120.85	121.60	153.26	186.00	285.82	158.72	193.70	329.55
47	122.31	122.25	155.12	189.10	289.54	161.20	196.95	334.75
48	125.77	125.55	159.60	192.20	293.88	163.68	200.20	339.30
49	127.23	126.85	161.46	195.30	298.22	166.16	203.45	344.50
50	127.96	128.80	165.18	198.40	305.66	169.88	206.70	352.95
51	130.88	130.10	167.04	201.50	308.76	171.12	209.95	362.70
52	132.34	131.40	169.52	204.60	313.10	174.84	213.20	362.70
53	135.80	134.70	173.38	207.70	317.44	177.32	216.45	373.10
54	137.99	135.35	175.86	210.80	321.78	179.80	219.70	373.10
55	138.72	136.65	177.72	213.90	326.12	181.66	222.95	381.55
56	140.18	137.30	180.20	217.00	330.46	184.76	226.20	381.55
57	141.91	139.60	183.06	220.10	334.80	186.62	229.45	389.35
58	142.64	140.25	184.92	223.20	338.52	189.72	232.70	389.35
59	144.10	141.55	187.40	226.30	342.86	191.58	235.95	397.80
60	144.10	142.85	189.26	229.40	347.20	194.68	239.20	397.80
61	147.56	147.45	193.74	232.50	351.54	196.54	242.45	407.55
62	148.29	148.10	195.60	234.98	355.26	200.26	245.70	407.55
63	149.02	149.40	198.08	238.08	360.22	201.50	248.95	417.30
64	151.75	152.05	201.94	241.18	362.08	205.22	252.20	417.30
65	152.48	153.35	204.42	244.28	368.90	206.46	255.45	427.05
66	153.21	154.00	206.28	247.38	368.90	210.18	258.70	427.05
67	153.94	155.30	208.14	250.48	375.72	211.42	261.95	436.80
68	155.67	157.60	211.62	253.58	376.96	215.14	265.20	436.80
69	156.40	158.25	213.48	256.68	382.54	216.38	268.45	446.55
70	157.13	158.90	215.96	259.78	382.54	220.10	271.70	446.55

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Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 01–19993 Filed 8–9–01; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 9

[FRL–7028–2]

OMB Approvals Under the Paperwork Reduction Act; Technical Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA), this technical amendment amends the table that lists the Office of Management and Budget (OMB) control number issued under the PRA for EPA's Confidentiality Rules.

In addition, this technical amendment amends the table that lists the OMB control number issued under the PRA for the rule entitled Imports and Exports of Hazardous Wastes: Implementation of OECD Council Decision C(92)39 Concerning Control of Transfrontier Movements of Wastes Destined for Recovery Operations.

EFFECTIVE DATE: This rule is effective August 10, 2001.

FOR FURTHER INFORMATION CONTACT: Rebecca Moser, Office of Environmental Information, phone 202–260–6780, concerning EPA's Confidentiality Rules; or James Michael, Office of Solid Waste and Emergency Response, phone 703–308–8610, concerning Imports and Exports of Hazardous Wastes.

SUPPLEMENTARY INFORMATION: EPA is amending the table of currently approved information collection request (ICR) control numbers issued by OMB for various regulations. This amendment updates the table to list those information collection requirements promulgated under EPA's Confidentiality Rules, which appeared in the **Federal Register** at 41 FR 36902 on September 1, 1976, as amended at 43 FR 40000, September 8, 1978, and 50 FR 51661, December 18, 1985. The affected regulations are codified at 40 CFR part 2, subpart B.

This amendment also updates the table to list those information collection requirements promulgated under Imports and Exports of Hazardous Wastes: Implementation of OECD Council Decision C(92)39 Concerning Control of Transfrontier Movements of Wastes Destined for Recovery Operations, which appeared in the **Federal Register** at 61 FR 16310 on April 12, 1996. The affected regulations are codified at 40 CFR 262.83–262.85 and 40 CFR 262.87.

EPA will continue to present OMB control numbers in a consolidated table format to be codified in 40 CFR part 9 of the Agency's regulations. The table lists CFR citations with reporting, recordkeeping, or other information collection requirements, and the current OMB control numbers. This listing of the OMB control numbers and their subsequent codification in the CFR satisfies the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and OMB's implementing regulations at 5 CFR part 1320.

These ICRs were previously subject to public notice and comment prior to OMB approval. Due to the technical nature of the table, EPA finds that further notice and comment is unnecessary. As a result, EPA finds that there is ''good cause'' under section 553(b)(B) of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), to amend this table without prior notice and comment.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty, contain any unfunded mandate, or impose any significant or unique impact on small governments as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not require prior consultation with State, local, and tribal government officials as specified by Executive Order 13132 (64 FR 43255, October 10, 1999) or Executive Order 13084 (63 FR 27655 (May 10, 1998), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. 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). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of August 10, 2001. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

Dated: July 24, 2001.

Oscar Morales,

Director, Collection Strategies Division, Office of Information Collection.

For the reasons set out in the preamble, 40 CFR part 9 is amended as follows:

PART 9—[AMENDED]

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 et seq., 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. In § 9.1 the table is amended:

a. By revising the entry ''Part 2, Subpart B''.

b. By adding new entries in numerical order under the indicated heading for ''262.83–262.85'' and ''262.87''.

The revision and additions read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB Control No.
Public Information	
Part 2, subpart B	2020–0003
* * * *	
Standards Applicable to Generators of Hazardous Waste	
* * * *	
262.83–262.85.	2050–0143
262.87	2050–0143
* * * *	

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[FR Doc. 01–20127 Filed 8–9–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ 086–0043; FRL–7029–5]

Partial Removal of Direct Final Rule Revising the Arizona State Implementation Plan, Maricopa County Environmental Services Department

AGENCY: Environmental Protection Agency (EPA).

ACTION: Partial removal of direct final rule.

SUMMARY: EPA is removing direct final approval of a revision to the Arizona State Implementation Plan (SIP) that was published on May 24, 2001 (66 FR 28666).

EFFECTIVE DATE: August 10, 2001.

FOR FURTHER INFORMATION CONTACT: Yvonne Fong, Rulemaking Office (Air-4), U.S. Environmental Protection Agency, Region IX, (415) 744–1199.

SUPPLEMENTARY INFORMATION: On May 24, 2001 (66 FR 28685), EPA proposed to approve the following rules into the California and Arizona State Implementation Plans (SIP).

Local agency	Rule #	Rule title
Antelope Valley	1171	Solvent Cleaning Operations.
Maricopa County	344	Automotive Windshield Washer Fluid.

On the same day (66 FR 28666), EPA also published a direct final rule approving these rules into their respective SIPs, and providing a 30 day public comment period and explained that if we received adverse comments, we would withdraw the relevant direct final action.

We did receive adverse comments, and are therefore removing the direct final approval of Maricopa County Environmental Services Department (MCESD) Rule 344, Automotive Windshield Washer Fluid. We are not opening an additional comment period. At a later date, we intend to respond to comments and finalize action on this rule based on the May 24, 2001 proposal. The other rule listed above is not affected by this removal and is incorporated into the SIP as of the effective date of the May 24, 2001 direct final action.

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: July 18, 2001.

Jane Diamond,

Acting Regional Administrator, Region IX.

Subpart F of part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

Subpart F—California

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

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

2. Section 52.120 is amended by removing and reserving paragraph (c)(94)(i)(E) to read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(94) * * *

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(E) [Reserved]

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[FR Doc. 01–20042 Filed 8–9–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA–4121a; FRL–7027–9]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; NO_X RACT Determination for Latrobe Steel Company in the Pittsburgh-Beaver Valley Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the Commonwealth of Pennsylvania's State Implementation Plan (SIP). The revision was submitted by the Pennsylvania Department of Environmental Protection (PADEP) to establish and require reasonably available control technology (RACT) for Latrobe Steel Company, a major source of nitrogen oxides (NO_X) located in the Pittsburgh-Beaver Valley ozone nonattainment area (the Pittsburgh area). EPA is approving this revision to establish RACT requirements in the SIP in accordance with the Clean Air Act (CAA).

DATES: This rule is effective on September 24, 2001 without further notice, unless EPA receives adverse written comment by September 10, 2001. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to David L. Arnold, Chief, Air Quality Planning & Information Services Branch, Air Protection Division, Mail code 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Michael Ioff at (215) 814–2166, the EPA Region III address above or by e-mail at *ioff.mike@epa.gov*. Please note that while questions may be posed via telephone and e-mail, formal comments

must be submitted, in writing, as indicated in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to sections 182(b)(2) and 182(f) of the Clean Air Act (CAA), the Commonwealth of Pennsylvania (the Commonwealth or Pennsylvania) is required to establish and implement RACT for all major volatile organic compounds (VOC) and NO_X sources. The major source size is determined by its location, the classification of that area and whether it is located in the ozone transport region (OTR). Under section 184 of the CAA, RACT as specified in sections 182(b)(2) and 182(f) applies throughout the OTR. The entire Commonwealth is located within the OTR. Therefore, RACT is applicable statewide in Pennsylvania.

State implementation plan revisions imposing reasonably available control technology (RACT) for three classes of VOC sources are required under section 182(b)(2). The categories are: (1) All sources covered by a Control Technique Guideline (CTG) document issued between November 15, 1990 and the date of attainment; (2) All sources covered by a CTG issued prior to November 15, 1990; (3) All other major non-CTG rules were due by November 15, 1992. The Pennsylvania SIP has approved RACT regulations and requirements for all sources and source categories covered by the CTG's.

On February 4, 1994, the Pennsylvania Department of Environmental Protection (PADEP) submitted a revision to its SIP to require major sources of NO_X and additional major sources of VOC emissions (not covered by a CTG) to implement RACT. The February 4, 1994 submittal was amended on May 3, 1994 to correct and clarify certain presumptive NO_X RACT requirements. In the Pittsburgh area, a major source of VOC is defined as one having the potential to emit 50 tons per year (tpy) or more, and a major source of NO_X is defined as one having the potential to emit 100 tpy or more. Pennsylvania's RACT regulations require sources, in the Pittsburgh area, that have the potential to emit 50 tpy or more of VOC and sources which have the potential to emit 100 tpy or more of NO_X comply with RACT by May 31, 1995. The regulations contain technology-based or operational ''presumptive RACT emission limitations'' for certain major NO_X sources. For other major NO_X sources, and all major non-CTG VOC sources (not otherwise already subject to RACT under the Pennsylvania SIP), the regulations contain a ''generic'' RACT provision. A generic RACT regulation is one that does not, itself, specifically define RACT for a source or source categories but instead allows for case-by-case RACT determinations. The generic provisions of Pennsylvania's regulations allow for PADEP to make case-by case RACT determinations that are then to be submitted to EPA as revisions to the Pennsylvania SIP.

On March 23, 1998 EPA granted conditional limited approval to the Commonwealth's generic VOC and NO_X RACT regulations (63 FR 13789). In that action, EPA stated that the conditions of its approval would be satisfied once the Commonwealth either (1) certifies that it has submitted case-by-case RACT proposals for all sources subject to the RACT requirements currently known to PADEP; *or* (2) demonstrates that the emissions from any remaining subject sources represent a de minimis level of emissions as defined in the March 23, 1998 rulemaking. On April 22, 1999, PADEP made the required submittal to EPA certifying that it had met the terms and conditions imposed by EPA in its March 23, 1998 conditional limited approval of its VOC and NO_X RACT regulations by submitting 485 case-by-case VOC/NO_X RACT determinations as SIP revisions and making the demonstration described as condition 2, above. EPA determined that Pennsylvania's April 22, 1999 submittal satisfied the conditions imposed in its conditional limited approval published on March 23, 1998. On May 3, 2001 (66 FR 22123), EPA published a rulemaking action removing the conditional status of its approval of the Commonwealth's generic VOC and NO_X RACT regulations on a statewide basis. The regulation currently retains its limited approval status. Once EPA has approved the case-by-case RACT determinations submitted by PADEP to satisfy the conditional approval for subject sources located in Allegheny, Armstrong, Beaver, Butler, Fayette, Washington, and Westmoreland Counties; the limited approval of Pennsylvania's generic VOC and NO_X RACT regulations shall convert to a full approval for the Pittsburgh area.

On March 21, 1996, PADEP submitted revisions to the Pennsylvania SIP which establish and impose case-by-case RACT for several sources of VOC and/or NO_X. This rulemaking pertains to the Commonwealth's submittal of operating permit (OP) 65–000–016 which imposes NO_X RACT requirements for the Latrobe Steel Company (LSC), a major source of NO_X located in the Pittsburgh area. The RACT determinations submitted on March 21, 1996 for other sources are or have been the subject of separate rulemakings.

II. Summary of the SIP Revision

The Latrobe Steel Company (Latrobe) is a producer of high-performing alloy and specialty steels located in the Borough of Latrobe, Westmoreland County, Pennsylvania. The Latrobe facility consists of eighty-eight individual unit/processes with potential NO_X and VOC emissions of 493.4 tons per year and 15 tons per year, respectively facility-wide. As the facility's potential VOC emissions are less than 50 tons per year, the facility is not a major source of VOC. The facility is a major source of NO_X and is subject to RACT. The PADEP established NO_X RACT requirements for the facility in OP 65–000–016 for the eighty-eight individual units or processes subject to Pennsylvania's RACT regulation.

A. Description of the NO_X Emitting Units/Processes at Latrobe Steel

(1) Electric Arc Furnaces (EAFs) A and B at the Melt Shop—Both EAFs are used at the plant to melt and refine the charge of metallic scrap, fluxes, and various alloying elements. The sufficient resistive heating is generated inside the refractory-lined furnace vessel by electrical current flowing between the three graphite electrodes and through the metallic charge. In spite of very high temperatures which arise inside the furnace during the melting phase, only modest NO_X formation occurs. This is due to the fact that in the EAF process the generation of NO_X is largely transferred from a steelmaking facility to an electric generating unit at a utility plant where those emissions are controlled.

(2) Heating/Reheating/Annealing Furnaces—Heating/reheating furnaces are used for heat-treating of steel and bringing it to a uniform temperature suitable for hot working. Annealing furnaces are used to refine the steel grain structure, to relief stresses induced by hot or cold working, and to alter the mechanical properties of steel in order to improve its machinability. Heat treatment of the alloy steels is conducted at a slow rate and relatively low temperatures to minimize thermal stresses and to avoid distortion and cracking.

B. Description of the RACT Determinations

Of the eighty-eight NO_X emitting units/processes, seventy-nine are various heating/reheating/annealing natural gas-fired furnaces with a rated gross heat input of less than 20 MMBTU/hr each. Pennsylvania has

determined that these sources are subject to SIP-approved presumptive RACT requirements set forth in 25 Pa. Code Section 129.93(c)(1) which require that the installation, maintenance, and operation of the source be done in accordance with manufacturer's specifications. One of the other nine remaining sources is a natural gas-fired combustion unit (boiler) with a rated gross heat input between 20 MMBTU/hr and 50 MMBTU/hr. Pennsylvania has determined that this source is a subject to SIP-approved presumptive RACT requirements set forth in 25 Pa. Code Section 129.93(b)(2) which require that an annual adjustment or tune-up of the combustion process be performed.

The remaining eight sources are comprised of two EAFs, four Carbottom natural gas-fired heating furnaces with a rated gross heat input of less than 50 MMBTU/hr each, and two natural gas-fired reheating furnaces (Selas Barrel and Salem Walking Beam furnaces) with a rated gross heat input of less than 100 MMBTU/hr each. The following NO_X control options were evaluated in a case-by-case RACT analysis: Selective Non-Catalytic Reduction (SNCR), Selective Catalytic Reduction (SCR), Waste Gas Wet Scrubber, Exhaust Gas Recirculation (EGR), Staged Combustion Burners, Low NO_X Burners, and Optimized Combustion Systems Operations/Maintenance Procedures. Pennsylvania's determinations of NO_X RACT requirements for these eight furnaces were based upon case-by-case analyses of whether or not the evaluated control technologies were technically and economically feasible options in each particular application. A summary of Pennsylvania's NO_X RACT determinations for these furnaces is provided below.

(1) EAFs and B at the Melt Shop—The PADEP concluded that there are no feasible control technologies for reducing NO_X emissions from the existing EAFs. The equipment and technology currently in place are constitute RACT for the source. In OP 65–000–016, PADEP limits NO_X emissions from EAFs A and B to 0.52 lbs per ton each and to 14.5 tpy and 21.7 tpy, respectively.

(2) Carbottom furnaces (No. 1 and No. 2 at the Melt Shop; No. 7 and No. 50 at the Mesta Press—Furnaces Nos. 1, 2, and 7 are identical in design and rated capacity and consist of 16 natural gas-fired burners each with a total gross heat input of 29.6 MMBTU/hr per furnace. Furnace No. 50 consists of 15 natural gas-fired burners with a total gross heat input of 20.6 MMBTU/hr. Based upon a case-by-case NO_X RACT analysis, Pennsylvania has concluded that implementation of combustion operating/maintenance procedures constitutes RACT for these sources. This control option is consistent with the SIP-approved presumptive RACT requirements for combustion units with a rated gross heat input between 20 MMBTU/hr and 50 MMBTU/hr set forth in 25 Pa. Code Section 129.93.(b)(2). Pennsylvania also limits NO_X emissions from each of Carbottom furnaces Nos. 1, 2 and 7 to 0.12 lbs/MMBTU and to 15.6 tpy. The NO_X emissions from Carbottom furnace No. 50 are limited to 0.12 lbs/MMBTU and 13.7 tpy.

(3) Selas Barrel furnace No. 1 at the Continuous Rolling Mill—The furnace consists of 88 natural gas-fired burners with a total gross heat input of 80.8 MMBTU/hr. Based upon a case-by-case NO_X RACT analysis, Pennsylvania has concluded that implementation of combustion operating/maintenance procedures constitutes RACT for the source. Pennsylvania also limits NO_X emissions from Selas Barrel furnace No. 1 to 0.12 lbs/MMBTU and to 35.7 tpy.

(4) Salem Walking Beam furnace at the Continuous Rolling Mill—The furnace consists of 13 natural gas-fired burners with a total gross heat input of 88 MMBTU/hr. Pennsylvania limits the hours of operations to no more than 6,000 hours in any calendar year and requires implementation of specified combustion operating/maintenance procedures. In addition to restricting the furnace's operating hours, Pennsylvania also limits the NO_X emissions from the Salem Walking Beam furnace to 0.12 lbs/MMBTU and to 46.3 tpy.

III. EPA's Evaluation of Pennsylvania's SIP Revision

EPA is approving Pennsylvania's RACT SIP submittal of OP 65–000–016 which establishes and imposes RACT requirements on Latrobe Steel in accordance with the criteria set forth in its SIP-approved RACT regulations and which also imposes record-keeping, monitoring, and testing requirements sufficient to determine compliance with the applicable RACT determinations.

IV. Final Action

EPA is approving Latrobe Steel's OP 65–000–016 as a revision to the Pennsylvania SIP. It was submitted by PADEP to establish and impose NO_X RACT for Latrobe Steel, a major source located in the Pittsburgh area. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on September 24, 2001 without further notice unless EPA receives adverse comment by September 10, 2001. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

V. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.'' See 66 FR 28355, May 22, 2001. 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.*).

B. 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 804 exempts from section 801 the following types of rules: (1) rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability establishing source-specific requirements for one named source.

C. Petitions for Judicial Review

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 October 9, 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 approving the Commonwealth's source-specific RACT requirements to control NO_X from Latrobe Steel may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Nitrogen Oxides, Ozone, Reporting and record-keeping requirements.

Dated: August 1, 2001.

Thomas C. Voltaggio,

Deputy Regional Administrator, Region III.

40 CFR part 52 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 NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c)(158) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(158) Revision pertaining to NO_X RACT for the Latrobe Steel Company located in Latrobe Borough, Westmoreland County, submitted by the Pennsylvania Department of Environmental Protection on March 21, 1996.

(i) Incorporation by reference.

(A) Letter submitted on March 21, 1996 by the Pennsylvania Department of Environmental Protection transmitting source-specific VOC and/or NO_X RACT determinations.

(B) Operating Permit 65–000–016, effective December 22, 1995, for the Latrobe Steel Company in Latrobe Borough, Westmoreland County, except for the specified Permit Term: 12/22/95–12/22/00.

(ii) Additional Materials—Other materials submitted by the Commonwealth of Pennsylvania in support of and pertaining to the RACT determination for the source listed in (i)(B), above.

[FR Doc. 01–20140 Filed 8–9–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA179–0243a; FRL–7022–5]

Revisions to the California State Implementation Plan, Kern County Air Pollution Control District and Imperial County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Kern County Air Pollution Control District (KCAPCD) and the Imperial County Air Pollution Control District (ICAPCD) portion of the California State Implementation Plan (SIP). Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), we are approving local rules that address general requirements for source sampling and continuous monitoring systems.

DATES: This rule is effective on October 9, 2001 without further notice, unless EPA receives adverse comments by September 10, 2001. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, N.W., Washington D.C. 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814.

Kern County Air Pollution Control District, 2700 ''M'' Street, Suite 302, Bakersfield, CA 93301–2370.

Imperial County Air Pollution Control District, 150 South 9th Street, El Centro, CA 92243–2801.

FOR FURTHER INFORMATION CONTACT: Stanley Tong, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 744–1191.

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

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I. The State's Submittal

A. What Rules Did the State Submit?

Table 1 lists the rules we are approving with the dates that they were adopted by the local air agencies and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted	Submitted	Completeness ltr.
KCAPCD	108	Stack Monitoring	05/02/96	07/23/96	10/30/96
KCAPCD	108.1	Source Sampling	05/02/96	07/23/96	10/30/96
ICAPCD	109	Source Sampling	09/14/99	05/26/00	10/06/00
ICAPCD	110	Stack Monitoring	09/14/99	05/26/00	10/06/00

Table 1 also provides the dates these rule submittals were found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

B. Are There Other Versions of These Rules?

We approved a version of KCAPCD Rules 108 and 108.1 into the SIP for the Kern County Air Pollution Control District on July 6, 1982, and August 22, 1977, respectively. The KCAPCD adopted revisions to the SIP-approved version of Rule 108.1 on May 6, 1991 and CARB submitted them to us on May 30, 1991. The KCAPCD adopted additional revisions to Rule 108.1 on May 2, 1996 and CARB submitted them to us on July 23, 1996. While we can only act on the most recently submitted version, we have reviewed materials provided with previous submittals.

The previous version of ICAPCD Rules 109 and 110 were approved into the SIP for the Imperial County Air Pollution Control District on August 11, 1978 and February 3, 1989, respectively.

C. What Is the Purpose of the Submitted Rule Revisions?

KCAPCD Rule 108 contains general requirements on the types of sources required to install continuous monitoring systems, the standards of performance, and the reporting and recordkeeping requirements for those systems. KCAPCD Rule 108.1 contains general requirements for preparing and performing stack sampling. ICAPCD Rule 109 contains general requirements for preparing to perform stack sampling. ICAPCD Rule 110 contains general requirements on the types of sources required to install continuous monitoring systems, the standards of performance, and the reporting and recordkeeping requirements for those systems. The TSDs have more information about these rules.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rules?

These rules describe general provisions that support emission monitoring and testing found in other local agency requirements. Generally, SIP rules must be enforceable (see section 110(a) of the Act) and must not relax existing requirements (see sections 110(l) and 193). Guidance and policy documents that we used to define specific enforceability requirements include, ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24, 1987 **Federal Register** Notice,'' (Blue Book), notice of availability published in the May 25, 1988 **Federal Register**.

B. Do the Rules Meet the Evaluation Criteria?

We believe these rules are consistent with the relevant policy and guidance regarding enforceability and SIP relaxations. The TSDs have more information on our evaluation.

C. EPA Recommendations to Further Improve the Rules

The TSDs describe additional rule revisions that do not affect EPA's current action but are recommended for the next time the local agency modifies the rules.

D. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by September 10, 2001, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on October 9, 2001. This will incorporate these rules into the federally enforceable SIP.

III. Background Information

Why Were These Rules Submitted?

Section 110(a) of the CAA requires states to submit regulations that control volatile organic compounds, oxides of nitrogen, particulate matter, and other air pollutants which harm human health and the environment. These rules were developed as part of the local agency's program to control these pollutants.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 32111, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). 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 October 9, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compound.

Dated: July 17, 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)(239)(i)(C)(*2*) and (279)(i)(A)(*4*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(239) * * *

(i) * * *

(C) * * *

(*2*) Rules 108 and 108.1 adopted on May 2, 1996.

* * * * *

(279) * * *

(i) * * *

(A) * * *

(*4*) Rules 109 and 110 adopted on September 14, 1999.

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[FR Doc. 01–20139 Filed 8–9–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA101/178–4124a ; FRL–7030–7]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; VOC and NO_X RACT Determinations for Five Individual Sources in the Pittsburgh-Beaver Valley Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Commonwealth of Pennsylvania's State Implementation Plan (SIP). The revisions were submitted by the Pennsylvania Department of Environmental Protection (PADEP) to establish and require reasonably available control technology (RACT) for five major sources of volatile organic compounds (VOC) and nitrogen oxides (NO_X). These sources are located in the Pittsburgh-Beaver Valley ozone nonattainment area (the Pittsburgh area). EPA is approving these revisions to establish RACT requirements in the SIP in accordance with the Clean Air Act (CAA).

DATES: This rule is effective on September 24, 2001 without further notice, unless EPA receives adverse written comment by September 10, 2001. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register**

and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to David L. Arnold, Chief, Air Quality Planning & Information Services Branch, Air Protection Division, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105; and the Allegheny County Health Department, Bureau of Environmental Quality, Division of Air Quality, 301 39th Street, Pittsburgh, Pennsylvania 15201.

FOR FURTHER INFORMATION CONTACT: Catherine Magliocchetti at (215) 814–2174, or Ellen Wentworth at (215) 814–2034 at the EPA Region III address above or by e-mail at *magliocchetti.catherine@epa.gov* or *wentworth.ellen@epa.gov.* Please note that while questions may be posed via telephone and e-mail, formal comments must be submitted, in writing, as indicated in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to sections 182(b)(2) and 182(f) of the Clean Air Act (CAA), the Commonwealth of Pennsylvania (the Commonwealth of Pennsylvania) is required to establish and implement RACT for all major VOC and NO_X sources. The major source size is determined by its location, the classification of that area and whether it is located in the ozone transport region (OTR). Under section 184 of the CAA, RACT as specified in sections 182(b)(2) and 182(f)) applies throughout the OTR. The entire Commonwealth is located within the OTR. Therefore, RACT is applicable statewide in Pennsylvania.

State implementation plan revisions imposing reasonably available control technology (RACT) for three classes of VOC sources are required under section 182(b)(2). The categories are:

(1) All sources covered by a Control Technique Guideline (CTG) document issued between November 15, 1990 and the date of attainment;

(2) All sources covered by a CTG issued prior to November 15, 1990; and

(3) All major non-CTG sources. The regulations imposing RACT for these non-CTG major sources were to be submitted to EPA as SIP revisions by November 15, 1992 and compliance required by May of 1995.

The Pennsylvania SIP already includes approved RACT regulations for all sources and source categories covered by the CTGs. On February 4, 1994, PADEP submitted a revision to its SIP to require major sources of NO_X and additional major sources of VOC emissions (not covered by a CTG) to implement RACT. The February 4, 1994 submittal was amended on May 3, 1994 to correct and clarify certain presumptive NO_X RACT requirements. In the Pittsburgh area, a major source of VOC is defined as one having the potential to emit 50 tons per year (tpy) or more, and a major source of NO_X is defined as one having the potential to emit 100 tpy or more. Pennsylvania's RACT regulations require sources, in the Pittsburgh area, that have the potential to emit 50 tpy or more of VOC and sources which have the potential to emit 100 tpy or more of NO_X comply with RACT by May 31, 1995. The regulations contain technology-based or operational ''presumptive RACT emission limitations'' for certain major NO_X sources. For other major NO_X sources, and all major non-CTG VOC sources (not otherwise already subject to RACT under the Pennsylvania SIP), the regulations contain a ''generic'' RACT provision. A generic RACT regulation is one that does not, itself, specifically define RACT for a source or source categories but instead allows for case-by-case RACT determinations. The generic provisions of Pennsylvania's regulations allow for PADEP to make case-by case RACT determinations that are then to be submitted to EPA as revisions to the Pennsylvania SIP.

On March 23, 1998 EPA granted conditional limited approval to the Commonwealth's generic VOC and NO_X RACT regulations (63 FR 13789). In that action, EPA stated that the conditions of its approval would be satisfied once the Commonwealth either (1) Certifies that it has submitted case-by-case RACT proposals for all sources subject to the RACT requirements currently known to PADEP; *or* (2) demonstrate that the emissions from any remaining subject sources represent a de minimis level of emissions as defined in the March 23, 1998 rulemaking. On April 22, 1999, PADEP made the required submittal to EPA certifying that it had met the terms and conditions imposed by EPA in its March 23, 1998 conditional limited approval of its VOC and NO_X RACT regulations by submitting 485 case-by-case VOC/NO_X RACT determinations as SIP revisions and making the demonstration described as condition 2, above. EPA determined that Pennsylvania's April 22, 1999 submittal satisfied the conditions imposed in its conditional limited approval published on March 23, 1998. On May 3, 2001 (66 FR 22123), EPA published a rulemaking action removing the conditional status of its approval of the Commonwealth's generic VOC and NO_X RACT regulations on a statewide basis. The regulation currently retains its limited approval status. Once EPA has approved the case-by-case RACT determinations submitted by PADEP to satisfy the conditional approval for subject sources located in Allegheny, Armstrong, Beaver, Butler, Fayette, Washington, and Westmoreland Counties; the limited approval of Pennsylvania's generic VOC and NO_X RACT regulations shall convert to a full approval for the Pittsburgh area.

It must be noted that the Commonwealth has adopted and is implementing additional ''post RACT requirements'' to reduce seasonal NO_X emissions in the form of a NO_X cap and trade regulation, 25 Pa Code Chapters 121 and 123, based upon a model rule developed by the States in the OTR. That rule's compliance date is May 1999. That regulation was approved as SIP revision on June 6, 2000 (65 FR 35842). Pennsylvania has also adopted regulations to satisfy Phase I of the NO_X SIP call and submitted those regulations to EPA for SIP approval. Pennsylvania's SIP revision to address the requirements of the NO_X SIP Call Phase I consists of the adoption of Chapter 145—Interstate Pollution Transport Reduction and amendments to Chapter 123—Standards for Contaminants. On May 29, 2001 (66 FR 29064), EPA proposed approval of the Commonwealth's NO_X SIP call rule SIP submittal. EPA expects to publish the final rulemaking in the **Federal Register** in the near future. Federal approval of a case-by-case RACT determination for a major source of NO_X in no way relieves that source from any applicable requirements found in 25 PA Code Chapters 121, 123 and 145.

On January 6, 1995, September 13, 1996, and July 1, 1997, PADEP submitted revisions to the Pennsylvania SIP which establish and impose RACT for several major sources of VOC and/or NO_X. This rulemaking pertains to five of those sources. The remaining sources are or have been the subject of separate rulemakings. The Commonwealth's submittals consist of Plan Approvals

(PAs) issued by PADEP and Plan Approvals and Agreement Upon Consent Orders (COs) issued by the Allegheny County Health Department (ACHD). These PAs and COs impose VOC and/or NO_X RACT requirements for each source. These sources are all located in the Pittsburgh area.

II. Summary of the SIP Revisions

The table below identifies the sources, and their respective PAs and COs, which are the subject of this rulemaking. A summary of the VOC and NO_X RACT determinations for each source follows the table.

PENNSYLVANIA—VOC AND NO_X RACT DETERMINATIONS FOR INDIVIDUAL SOURCES

Source	County	PA# or CO#	Source type	''Major source'' pollutant
Duquesne Light Company—Brunot Island Power Station.	Allegheny	CO 214	Combustion Turbine Units	NO_X
Duquesne Light Company—Cheswick Power Station.	Allegheny	CO 217	Steam Boiler	NO_X
Duquesne Light Company—Elrama Plant	Washington	PA 63–000–014	Boilers; Low NO_X Burners	NO_X
Duquesne Light Company—Phillips Power Station.	Allegheny	CO 212	Coal-fired Steam Generators	NO_X
The Pennsylvania Electric Company—Keystone Generating Station.	Armstrong	PA 03–000–027	Steam Electric Generators; Low NO_X Burners	NO_X/VOC

(1) Duquesne Light Company—Brunot Island Power Station

(1) Duquesne Light Company's Brunot Island Power Station is located in Pittsburgh, Pennsylvania. The Duquesne Light Company's Brunot Island Power Station is a major NO_X emitting facility. In this instance, RACT has been established and imposed by the ACHD in CO 214. The PADEP submitted this CO to EPA on behalf of the ACHD as a SIP revision. The ACHD issued CO 214 to impose RACT for six combustion turbine units at this source, designated 1A, 1B, 1C, 2A, 2B, and 3, as follows. All six of the units can use natural gas or no. 2 fuel oil as fuel. There are no other NO_X emission sources at this facility.

The Brunot Island Power Station is precluded from operating Unit 2A, 2B or 3 in combined combustion cycle (CCC) mode, without a properly installed and operating water/stream injection NO_X control system in place at each of the units. The source is precluded from operating these same units in CCC without a properly installed and operating NO_X continuous emission monitoring system (CEMS) or an approved alternate, meeting all requirements of section 2108.03 of Article XXI of Allegheny County's air pollution control regulations.

Units 2A, 2B and 3, when operating in CCC mode, must each meet NO_X emission limitations of 0.25 lbs/MMBtu and 1,039 tpy. The source is required to determine compliance by using CEM data averaged over a 24-hour period for the first limit, and annual CEM data for the second limit. Units 1A, 1B, and 1C, when operating in Simple Combustion Cycle (SCC), must each meet NO_X emission limitations of 0.698 lbs/MMBtu and 330 tpy. Units 2A, 2B and 3, when operating in SCC, must each meet NO_X emission limitations of 0.698 lbs/MMBtu and 662 tpy. In addition, Units 1A, 1B and 1C are each limited to a maximum annual average capacity factor of 36 percent, and Units 2A, 2B, and 3 are each limited to a maximum annual average capacity factor of 23 percent.

The Duquesne Light Company is required to conduct NO_X emission tests, record fuel usage, and fuel analyses at its Brunot Island Power Station in order to determine compliance on these units, in accordance with EPA approved test methods and section 2108.2 of Article XXI. The source is required to maintain all appropriate records to demonstrate compliance with the requirements of both section 2105.06 of Article XXI and CO 214. The source is required to retain all records required by both section 2105.06 of Article XXI and CO 214 for this facility, for at least two years. The source is required to at all times properly operate and maintain all process and emission control equipment at the facility according to good engineering practices.

The Duquesne Light Company's Brunot Island Power Station is also subject to the additional post-RACT requirements to reduce NO_X, found at 25 PA Code Chapters 121, 123 and 145.

(2) Duquesne Light Company—Cheswick Power Station

The Duquesne Light Company's Cheswick Power Station is located in Springdale Borough, Pennsylvania. The Cheswick Power Station is a major NO_X emitting facility. In this instance, RACT has been established and imposed by the ACHD in CO 217. The PADEP submitted this CO to EPA on behalf of the ACHD as a SIP revision. The ACHD issued CO 217 to impose RACT for the one unit, a 5,280 MMBtu/hr boiler, known as Boiler No. 1.

The Cheswick Power Station, is precluded from operating the facility unless the low NO_X concentric firing system II, commonly known as ''LNCFS II,'' is properly maintained and operated. The source is also precluded from operating the facility unless a NO_X CEMS is properly maintained and operated as specified in section 2108.03 of Article XXI. Boiler No. 1 must meet the following NO_X emission limitations: 0.5548 lbs/MMBtu, an annual average of 0.45lbs/MMBtu, and total annual emissions may not exceed 10,840 tpy. Compliance with these limits shall be determined by using CEM data, using a 24-hour averaging period for the first limit, a one year averaging period for the second limit and annual CEM data for the third limit.

The Dusquesne Light Company is required to maintain all appropriate records to demonstrate compliance at its Cheswick Power Station with the requirements of both section 2105.06 of Article XXI, and CO 217. The source is required to retain all records required by both section 2105.06 of Article XXI and CO 217 for this facility for at least two years. The source is required to, at all times, properly operate and maintain all process and emission control equipment at the facility according to good engineering practices.

Duquesne Light Company, Cheswick Power Station, is also subject to additional post-RACT requirements to reduce NO_X , found at 25 PA Code Chapters 121, 123 and 145.

(3) Duquesne Light Company—Elrama Plant

The Duquesne Light Company's Elrama Plant is located in Union Township, Pennsylvania. The Elrama Plant is a major NO_X emitting facility. The PADEP issued PA 63–000–014 to impose RACT for this plant's NO_X emitting units. The plan approval for this facility requires the installation of low NO_X burning systems and associated modifications on Units 1 through 4 of the Elrama plant. The auxiliary boiler at the plant shall be limited to an annual capacity factor of no more than 66 percent, and Duquesne Light shall operate it in accordance with manufacturer specifications and keep data that clearly demonstrates compliance with this capacity factor.

The NO_X emission limit of 0.5 lbs/MMBtu, based on a 30-day rolling average, applies to the main stack at this facility. The yearly NO_X emission limit for Units 1, 2, 3, and 4 is 11,353 tpy. Stack testing is required in accordance with 25 PA. Code Chapter 139 and the PADEP's Source Testing Manual.

The Duquesne Light Company's Elrama Plant is also subject to additional post-RACT requirements to reduce NO_X found at 25 PA Code Chapters 121, 123 and 145.

(4) Duquesne Light Company—Phillips Power Station

Duquesne Light Company's Phillips Power Station is located in Crescent Township, Pennsylvania. The Phillips Power Station, is a major NO_X emitting facility. In this instance, RACT has been established and imposed by the ACHD in CO 212. The PADEP submitted CO 212 to EPA on behalf of the ACHD as a SIP revision. The ACHD issued CO 212 to impose RACT for Units 3, 4, and 5 (which are twin furnace steam generators) and Unit 6 (which is a re-heat unit).

The Phillips Power Station is precluded from operating Units 3, 4, 5, and 6 without proper installation and operation of low NO_X burner systems in place on each unit. The source is not allowed to operate these units without a properly installed and operating NO_X CEMs, meeting all the requirements of section 2108.03 of Article XXI. The NO_X emission limit for each of the units is 0.72 lbs/MMBtu. Units 3, 4, and 5 have an annual NO_X limitation of 2,718.3 tpy. Unit 6 has an annual NO_X limitation of 4,702.0 tpy. The Duquesne Light Company is required to determine compliance at its Phillips Power Station with the above-reference limits by using CEM data averaged over a 24 hour period and a one year period, respectively. The source is required to maintain all appropriate records to demonstrate compliance with the requirements of both section 2105.06 of Article XXI and CO 212. The source is required to retain all records required by both section 2105.06 of Article XXI and CO 212 for this facility, for at least two years. The source is required to at all times properly operate and maintain all process and emission control equipment at the facility according to good engineering practices.

Duquesne Light Company's Phillips Power Station is also subject to additional post-RACT requirements to reduce NO_X found at 25 PA Code Chapters 121, 123 and 145.

(5) The Pennsylvania Electric Power Company—Keystone Generating Station

The Pennsylvania Electric Power Company's (PENELEC's) Keystone Generating Station is located in Plumcreek Township, Pennsylvania. The Keystone Generating Station is a major source of both NO_X and VOCs. The PADEP issued PA 03–000–027 to PENELEC to impose RACT for the NO_X and VOC emitting units at its Keystone Generating Station.

The PADEP's PA 03–000–027 for this facility requires the installation of the low NO_X concentric firing system level II, commonly known as ''LNCFS, III'' on main Units 1 and 2.

The PADEP's PA 03–000–027 also requires that the plant's auxiliary boilers, Units A and B, be operated at a capacity factor of no more than 10 percent, and maintained in accordance with the manufacturer's specifications. PENELEC is required to maintain an operating log for the auxiliary boilers to verify that the annual capacity limit, noted above, is not exceeded. The source shall not operate diesel generators 3 through 6 in excess of a 5 percent annual capacity factor. These units are to be installed, maintained, and operated in accordance with the manufacturer's specifications. In addition, the source is required to maintain an operating log for diesel generators, emergency generator, fire pump and all other sources subject to any operating restriction to verify compliance with the applicable SIP-approved presumptive RACT limitations.

The NO_X emission limit for each main unit is 0.45 lbs/MMBtu, based on a 30-day rolling average. The yearly NO_X emission limit, facility-wide, is 31,673 tpy. Each main unit must meet an annual VOC limit of 71 tpy, and the entire facility's VOC emissions are limited to 144 tpy. All stack testing is required to be performed in accordance with 25 PA Code Chapter 139 and the PADEP's Source Testing Manual.

The PENELEC's Keystone Generating Station is also subject to additional post-RACT requirements to reduce NO_X found at 25 PA Code Chapters 121, 123 and 145.

EPA is approving these RACT SIP submittals because the ACHD and PADEP established and imposed these RACT requirements in accordance with the criteria set forth in the SIP-approved RACT regulations applicable to these sources. For the subject installations and processes at these sources, ACHD and PADEP determined RACT to be the technologically and economically feasible controls available to minimize NO_X and VOCs emissions, or to be SIP-approved presumptive RACT requirements. The ACHD and PADEP have also imposed record-keeping, monitoring, and testing requirements on these sources sufficient to determine compliance with the applicable RACT determinations.

III. Final Action

EPA is approving the revisions to the Pennsylvania SIP submitted by PADEP to establish and require VOC and NO_X RACT for five major of sources located in the Pittsburgh area. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on September 24, 2001 without further notice unless EPA receives adverse comment by September 10, 2001. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if adverse comment is received for a specific source or subset of sources covered by an amendment, section or paragraph of this rule, only that amendment, section, or paragraph for that source or subset of sources will be withdrawn.

IV. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is

not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.'' See 66 FR 28355, May 22, 2001. 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.*).

B. 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 804 exempts from section 801 the following types of rules: (1) rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability establishing source-specific requirements for five named sources.

C. Petitions for Judicial Review

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 October 9, 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 approving the Commonwealth's source-specific RACT requirements to control VOC and NO_X from five power plants in the Pittsburgh area may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: August 3, 2001.

Thomas C. Voltaggio,

Deputy Regional Administrator, Region III.

40 CFR part 52 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 NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c)(161) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(161) Revisions pertaining to NO_X and/or VOC RACT for major sources, located in the Pittsburgh-Beaver Valley ozone nonattainment area, submitted by the Pennsylvania Department of Environmental Protection on January 6, 1995, September 13, 1996, and July 1, 1997.

(i) Incorporation by reference.

(A) Letters from the Pennsylvania Department of Environmental Protection dated January 6, 1995, September 13, 1996, and July 1, 1997, transmitting source-specific VOC and/or NO_X RACT determinations.

(B) The following companies' Plan Approvals (PA), or Consent Orders (CO):

(*1*) Duquesne Light Company's Brunot Island Power Station, CO 214, effective May 20, 1996, except for conditions 1.7, 2.4, and 2.5.

(*2*) Duquesne Light Company's Cheswick Power Station, CO 217, effective March 8, 1996, except for condition 2.5.

(*3*) Duquesne Light Company's Elrama Plant, PA 63–000–014, effective December 29, 1994.

(*4*) Duquesne Light Company's Phillips Power Station, CO 212, effective March 8, 1996, except for conditions 1.4, 2.4 and 2.5.

(*5*) Pennsylvania Electric Company's Keystone Generating Plant, PA 03–000–027, effective December 29, 1994.

(ii) Additional Materials—Other materials submitted by the Commonwealth of Pennsylvania in support of and pertaining to the RACT

determinations for the sources listed in (i) (B), above.

[FR Doc. 01–20237 Filed 8–9–01; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA–4125a; FRL–7030–2]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; VOC RACT Determinations for Three Individual Sources in the Pittsburgh-Beaver Valley Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Commonwealth of Pennsylvania's State Implementation Plan (SIP). The revisions were submitted by the Pennsylvania Department of Environmental Protection (PADEP) to establish and require reasonably available control technology (RACT) for three major sources of volatile organic compounds (VOC). These sources are located in the Pittsburgh-Beaver Valley ozone nonattainment area (the Pittsburgh area). EPA is approving these revisions to establish RACT requirements in the SIP in accordance with the Clean Air Act (CAA).

DATES: This rule is effective on September 24, 2001 without further notice, unless EPA receives adverse written comment by September 10, 2001. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to David L. Arnold, Chief, Air Quality Planning & Information Services Branch, Air Protection Division, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW. , Washington, DC 20460; Allegheny County Health Department, Bureau of Environmental Quality, Division of Air Quality, 301 39th Street, Pittsburgh, Pennsylvania 15201 and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Rose Quinto at (215) 814–2182, the EPA Region III address above or by e-mail at *quinto.rose@epa.gov.* Please note that while questions may be posed via telephone and e-mail, formal comments must be submitted, in writing, as indicated in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to sections 182(b)(2) and 182(f) of the Clean Air Act (CAA), the Commonwealth of Pennsylvania (the Commonwealth or Pennsylvania) is required to establish and implement RACT for all major VOC and NO_X sources. The major source size is determined by its location, the classification of that area and whether it is located in the ozone transport region (OTR). Under section 184 of the CAA, RACT as specified in sections 182(b)(2) and 182(f)) applies throughout the OTR. The entire Commonwealth is located within the OTR. Therefore, RACT is applicable statewide in Pennsylvania.

State implementation plan revisions imposing reasonably available control technology (RACT) for three classes of VOC sources are required under section 182(b)(2). The categories are:

(1) All sources covered by a Control Technique Guideline (CTG) document issued between November 15, 1990 and the date of attainment;

(2) All sources covered by a CTG issued prior to November 15, 1990; and

(3) All major non-CTG sources. The regulations imposing RACT for these non-CTG major sources were to be submitted to EPA as SIP revisions by November 15, 1992 and compliance required by May of 1995.

The Pennsylvania SIP already includes approved RACT regulations for all sources and source categories covered by the CTGs. On February 4, 1994, PADEP submitted a revision to its SIP to require major sources of NO_X and additional major sources of VOC emissions (not covered by a CTG) to implement RACT. The February 4, 1994 submittal was amended on May 3, 1994 to correct and clarify certain presumptive NO_X RACT requirements. In the Pittsburgh area, a major source of VOC is defined as one having the potential to emit 50 tons per year (tpy) or more, and a major source of NO_X is defined as one having the potential to emit 100 tpy or more. Pennsylvania's RACT regulations require sources, in the Pittsburgh area, that have the potential to emit 50 tpy or more of VOC and sources which have the potential to emit 100 tpy or more of NO_X comply with RACT by May 31, 1995. The regulations contain technology-based or operational ''presumptive RACT emission limitations'' for certain major NO_X sources. For other major NO_X sources, and all major non-CTG VOC sources (not otherwise already subject to RACT under the Pennsylvania SIP), the regulations contain a ''generic'' RACT provision. A generic RACT regulation is one that does not, itself, specifically define RACT for a source or source categories but instead allows for case-by-case RACT determinations. The generic provisions of Pennsylvania's regulations allow for PADEP to make case-by-case RACT determinations that are then to be submitted to EPA as revisions to the Pennsylvania SIP.

On March 23, 1998 EPA granted conditional limited approval to the Commonwealth's generic VOC and NO_X RACT regulations (63 FR 13789). In that action, EPA stated that the conditions of its approval would be satisfied once the Commonwealth either (1) certifies that it has submitted case-by-case RACT proposals for all sources subject to the RACT requirements currently known to PADEP; *or* (2) demonstrate that the emissions from any remaining subject sources represent a de minimis level of emissions as defined in the March 23, 1998 rulemaking. On April 22, 1999, PADEP made the required submittal to EPA certifying that it had met the terms and conditions imposed by EPA in its March 23, 1998 conditional limited approval of its VOC and NO_X RACT regulations by submitting 485 case-by-case VOC/ NO_X RACT determinations as SIP revisions and making the demonstration described as condition 2, above. EPA determined that Pennsylvania's April 22, 1999 submittal satisfied the conditions imposed in its conditional limited approval published on March 23, 1998. On May 3, 2001 (66 FR 22123), EPA published a rulemaking action removing the conditional status of its approval of the Commonwealth's generic VOC and NO_X RACT regulations on a statewide basis. The regulation currently retains its limited approval status. Once EPA has approved the case-by-case RACT determinations submitted by PADEP to satisfy the conditional approval for subject sources located in Allegheny, Armstrong, Beaver, Butler, Fayette, Washington, and Westmoreland

Counties; the limited approval of Pennsylvania's generic VOC and NO_X RACT regulations shall convert to a full approval for the Pittsburgh area.

It must be noted that the Commonwealth has adopted and is implementing additional ''post RACT requirements'' to reduce seasonal NO_X emissions in the form of a NO_X cap and trade regulation, 25 Pa Code Chapters 121 and 123, based upon a model rule developed by the States in the OTR. That rule's compliance date is May 1999. That regulation was approved as SIP revision on June 6, 2000 (65 FR 35842). Pennsylvania has also adopted regulations to satisfy Phase I of the NO_X SIP call and submitted those regulations to EPA for SIP approval. Pennsylvania's SIP revision to address the requirements of the NO_X SIP Call Phase I consists of the adoption of Chapter 145—Interstate Pollution Transport Reduction and amendments to Chapter 123—Standards for Contaminants. On May 29, 2001 (66 FR 29064), EPA proposed approval of the Commonwealth's NO_X SIP call rule SIP submittal. EPA expects to publish the final rulemaking in the **Federal Register** in the near future. Federal approval of a case-by-case RACT determination for a major source of NO_X in no way relieves that source from any applicable requirements found in 25 PA Code Chapters 121, 123 and 145.

On July 1, 1997, PADEP submitted revisions to the Pennsylvania SIP which establish and impose RACT for several major sources of VOC and/or NO_X. This rulemaking pertains to three of those sources. The remaining sources are or have been the subject of separate rulemakings. The submittals consist of a plan approval and agreement upon consent order (Consent Order or CO) for each source issued by the Allegheny County Health Department (ACHD). The COs were submitted as SIP revisions by PADEP on behalf of ACHD. These three sources are located in the Pittsburgh area.

II. Summary of the SIP Revisions

A. IDL, Incorporated—IDL, Incorporated (IDL) is a custom screen printing facility located in Plum Borough, Allegheny County. IDL is a major VOC emitting facility. In this instance, RACT has been established and imposed by ACHD in CO 225. On July 1, 1997, PADEP submitted CO 225 to EPA on behalf of the ACHD as a SIP revision. The IDL facility has six screen printing presses that use a variety of inks and coatings, including ''special purpose inks and coatings'' and six drying ovens that are integral to each press. The CO requires that the VOC content of the inks used not exceed 3.3 pounds of VOC per gallon less water, with the exception of special purpose inks which shall not exceed 6.7 pounds of VOC per gallon less water. ''Special purpose screen printing inks and coatings'' means inks and coatings used in screen printing which are used to print ink transfers, or are designed to resist or withstand any of the following:

(1) More than two years of outdoor exposure;

(2) Exposure to chemicals, solvents, acids, detergents, oil products or cosmetics;

(3) Exposure to temperatures, in excess of 170 degrees fahrenheit;

(4) Vacuum forming;

(5) Embossing; or

(6) Molding.

Under CO 225, IDL must maintain records to demonstrate compliance with this CO and Article XXI, section 2105.06 of Allegheny County's air pollution regulations. Recordkeeping shall include the following: the quantity, composition, and density of all inks, coatings and solvents, including solvents used for clean-up, used in each screen press. All records shall be maintained for at least two years.

B. Oakmont Pharmaceutical, Inc.—Oakmont Pharmaceutical, Inc. (OPI) is a pharmaceutical tablet and solution finishing facility located in Verona, Allegheny County, Pennsylvania. OPI is a major VOC emitting facility. In this instance, RACT has been established and imposed by ACHD in CO 252. On July 1, 1997, PADEP submitted this CO to EPA on behalf of the ACHD as a SIP revision. OPI produces finished pharmaceutical tablets and solutions from uncoated tablets and individual solution components. The VOC emission units consist of five tablet coating machines and one mixing and bottling line. The CO requires that all process equipment be operated and maintained in accordance with good engineering and air pollution control practices. The VOC content of the carrier solution used in tablet coating machines 1–5 must not exceed 35 percent VOC by weight at any time. At no time may OPI use inks or glues with a VOC content that exceeds 8.0 pounds of VOC per gallon ,less water and exempt solvents. Under CO 252, OPI must maintain records to demonstrate compliance with this CO and Article XXI, section 2105.06. Recordkeeping shall include the following:

(1) Hours of operation, carrier solution composition and usage for tablet coaters;

(2) Type, quantity and composition of all inks and glues used in the facility; and

(3) Type of material stored and annual throughput for the isopropyl and denatured alcohol, witch hazel and mineral oil tanks. All records shall be maintained for at least two years.

C. U.S. Air, Inc.—U.S. Air, Inc. (USAir) is a commercial aircraft operations and maintenance facility located at the Pittsburgh International Airport (PIT), Allegheny County, Pennsylvania. USAir is a major VOC emitting facility. In this instance, RACT has been established and imposed by ACHD in CO 225. On July 1, 1997, PADEP submitted this CO to EPA on behalf of the ACHD as a SIP revision. USAir performs heavy maintenance on approximately 41 aircraft/year at the PIT Maintenance Base complex. Under CO 255, USAir must operate and maintain all processes and emission control equipments according to good engineering and air pollution control practices. At no time may USAir allow any coatings at the facility to exceed their respective VOC grams/liter limitations set forth in EPA's guideline document entitled, *Control of VOC Emissions from Coatings of Aerospace Manufacturing and Rework Operations,* dated July 1996 with the following exceptions:

(1) Touchup, aerosol and U.S. Department of Defense classified coatings;

(2) Coatings used on space vehicles; and

(3) If the facility uses separate formulations in volumes of less than 50 gallons per year, subject to a maximum exemption of 200 gallons total for such formulations, applied annually.

These exceptions are consistent with the EPA's guideline document cited above. CO 255 requires all fresh and used cleaning solvents, except semiaqueous cleaning solvents, used in the facility, be stored in nonabsorbent, nonleaking containers that are kept closed at all times except when filling and transferring. CO 255 also requires minimizing spills during the filling and transferring of the solvents, to and from enclosed systems, vats, waste containers, and other cleaning operations that hold or store fresh or used cleaning solvents. All spills of liquid or dry VOC containing material shall be cleaned up as soon as practicable. Under CO 255, USAir must maintain sufficient data and calculations to demonstrate compliance with this CO and Article XXI, section 2105.06. All records shall be maintained for at least two years.

III. EPA's Evaluation

EPA is approving these RACT SIP submittals because ACHD has

established and imposed these RACT requirements in accordance with the criteria set forth in the SIP-approved RACT regulations applicable to these sources. The ACHD has also imposed record-keeping, monitoring, and testing requirements on these sources sufficient to determine compliance with the applicable RACT determinations.

IV. Final Action

EPA is approving the revisions to the Pennsylvania SIP submitted by PADEP to establish and require VOC RACT for three major sources located in the Pittsburgh area. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on September 24, 2001 without further notice unless EPA receives adverse comment by September 10, 2001. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if adverse comment is received for a specific source or subset of sources covered by an amendment, section or paragraph of this rule, only that amendment, section, or paragraph for that source or subset of sources will be withdrawn.

IV. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.'' See 66 FR 28355, May 22, 2001. 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.*).

B. 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 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability establishing source-specific requirements for three named sources.

C. Petitions for Judicial Review

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 approving source-specific RACT requirements to control VOC from IDL, OPI and USAir located in the Pittsburgh-Beaver Valley area of Pennsylvania may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: August 3, 2001.

Thomas C. Voltaggio,

Deputy Regional Administrator, Region III.

40 CFR part 52 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 NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c)(162) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(c)(162) Revisions pertaining to VOC RACT for IDL, Incorporated; Oakmont Pharmaceutical, Inc.; and USAir, Inc. located in the Pittsburgh-Beaver Valley ozone nonattainment area, submitted by the Pennsylvania Department of Environmental Protection on July 1, 1997.

(i) Incorporation by reference.

(A) Letter submitted by the Pennsylvania Department of Environmental Protection transmitting source-specific VOC and NO_X RACT determinations dated July 1, 1997.

(B) Plan Approval and Agreement Upon Consent Orders (COs) for the following sources:

(*1*) IDL, Incorporated, CO 225, effective July 18, 1996, except for condition 2.5.

(*2*) Oakmont Pharmaceutical, Inc., CO 252, effective December 19, 1996, except for condition 2.5.

(*3*) U.S. Air, Inc., CO 255, effective January 14, 1997, except for condition 2.5.

(ii) Additional Materials—Other materials submitted by the Commonwealth of Pennsylvania in support of and pertaining to the RACT determinations submitted for the sources listed in (i)(B), above.

[FR Doc. 01–20239 Filed 8–9–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA–4130a; FRL–7030–6]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; VOC and NO_X RACT Determinations for Four Individual Sources in the Pittsburgh-Beaver Valley Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Commonwealth of Pennsylvania's State Implementation Plan (SIP). The revisions were submitted by the Pennsylvania Department of Environmental Protection (PADEP) to establish and require reasonably available control technology (RACT) for four major sources of volatile organic compounds (VOC) and nitrogen oxides (NO_X). These sources are located in the Pittsburgh-Beaver Valley ozone nonattainment area (the Pittsburgh area). EPA is approving these revisions to establish RACT requirements in the SIP in accordance with the Clean Air Act (CAA).

DATES: This rule is effective on September 24, 2001 without further notice, unless EPA receives adverse written comment by September 10, 2001. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to David L. Arnold, Chief, Air Quality Planning & Information Services Branch, Air Protection Division, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; Allegheny County Health Department, Bureau of Environmental Quality, Division of Air Quality, 301 39th Street, Pittsburgh, Pennsylvania 15201 and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Rose Quinto at (215) 814–2182, the EPA Region III address above or by e-mail at *quinto.rose@epa.gov.* Please note that while questions may be posed via telephone and e-mail, formal comments must be submitted, in writing, as indicated in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to sections 182(b)(2) and 182(f) of the Clean Air Act (CAA), the Commonwealth of Pennsylvania (the Commonwealth or Pennsylvania) is required to establish and implement RACT for all major VOC and NO_X sources. The major source size is determined by its location, the classification of that area and whether it is located in the ozone transport region (OTR). Under section 184 of the CAA, RACT as specified in sections 182(b)(2) and 182(f) applies throughout the OTR. The entire Commonwealth is located within the OTR. Therefore, RACT is applicable statewide in Pennsylvania.

State implementation plan revisions imposing reasonably available control technology (RACT) for three classes of VOC sources are required under section 182(b)(2). The categories are:

(1) All sources covered by a Control Technique Guideline (CTG) document issued between November 15, 1990 and the date of attainment;

(2) All sources covered by a CTG issued prior to November 15, 1990; and

(3) All major non-CTG sources. The regulations imposing RACT for these non-CTG major sources were to be submitted to EPA as SIP revisions by November 15, 1992 and compliance required by May of 1995.

The Pennsylvania SIP already includes approved RACT regulations for all sources and source categories covered by the CTGs. On February 4, 1994, PADEP submitted a revision to its SIP to require major sources of NO_X and additional major sources of VOC emissions (not covered by a CTG) to implement RACT. The February 4, 1994 submittal was amended on May 3, 1994 to correct and clarify certain presumptive NO_X RACT requirements. In the Pittsburgh area, a major source of VOC is defined as one having the potential to emit 50 tons per year (tpy) or more, and a major source of NO_X is defined as one having the potential to emit 100 tpy or more. Pennsylvania's RACT regulations require sources, in the Pittsburgh area, that have the potential to emit 50 tpy or more of VOC and sources which have the potential to emit 100 tpy or more of NO_X comply with RACT by May 31, 1995. The regulations contain technology-based or operational ''presumptive RACT emission limitations'' for certain major NO_X sources. For other major NO_X sources, and all major non-CTG VOC sources (not otherwise already subject to RACT under the Pennsylvania SIP), the regulations contain a ''generic'' RACT provision. A generic RACT regulation is one that does not, itself, specifically define RACT for a source or source categories but instead allows for case-by-case RACT determinations. The generic provisions of Pennsylvania's regulations allow for PADEP to make case-by-case RACT determinations that are then to be submitted to EPA as revisions to the Pennsylvania SIP.

On March 23, 1998 EPA granted conditional limited approval to the Commonwealth's generic VOC and NO_X RACT regulations (63 FR 13789). In that action, EPA stated that the conditions of its approval would be satisfied once the Commonwealth either (1) certifies that it has submitted case-by-case RACT proposals for all sources subject to the RACT requirements currently known to PADEP; *or* (2) demonstrate that the emissions from any remaining subject sources represent a de minimis level of emissions as defined in the March 23, 1998 rulemaking. On April 22, 1999, PADEP made the required submittal to EPA certifying that it had met the terms and conditions imposed by EPA in its March 23, 1998 conditional limited approval of its VOC and NO_X RACT regulations by submitting 485 case-by-case VOC/NO_X RACT determinations as SIP revisions and making the demonstration described as condition 2, above. EPA determined that Pennsylvania's April 22, 1999 submittal satisfied the conditions imposed in its conditional limited approval published on March 23, 1998. On May 3, 2001 (66 FR 22123), EPA published a rulemaking action removing the conditional status of its approval of the Commonwealth's generic VOC and NO_X RACT regulations on a statewide basis. The regulation currently retains its limited approval status. Once EPA has approved the case-by-case RACT determinations submitted by PADEP to satisfy the conditional approval for subject sources located in Allegheny, Armstrong, Beaver, Butler, Fayette, Washington, and Westmoreland Counties; the limited approval of Pennsylvania's generic VOC and NO_X RACT regulations shall convert to a full approval for the Pittsburgh area.

It must be noted that the Commonwealth has adopted and is implementing additional ''post RACT requirements'' to reduce seasonal NO_X emissions in the form of a NO_X cap and trade regulation, 25 Pa Code Chapters 121 and 123, based upon a model rule developed by the States in the OTR. That rule's compliance date is May 1999. That regulation was approved as SIP revision on June 6, 2000 (65 FR 35842). Pennsylvania has also adopted regulations to satisfy Phase I of the NO_X SIP call and submitted those regulations to EPA for SIP approval. Pennsylvania's SIP revision to address the requirements of the NO_X SIP Call Phase I consists of the adoption of Chapter 145—Interstate Pollution Transport Reduction and amendments to Chapter 123—Standards for Contaminants. On May 29, 2001 (66 FR 29064), EPA proposed approval of the Commonwealth's NO_X SIP call rule SIP submittal. EPA expects to publish the final rulemaking in the **Federal Register** in the near future. Federal approval of a case-by-case RACT determination for a major source of NO_X in no way relieves that source from any applicable requirements found in 25 PA Code Chapters 121, 123 and 145.

On July 1, 1997 and April 19, 2001, PADEP submitted revisions to the Pennsylvania SIP which establish and impose RACT for several major sources of VOC and/or NO_X. This rulemaking pertains to four of those sources. The remaining sources are or have been the subject of separate rulemakings. The Commonwealth's submittals consist of plan approval and agreement upon consent orders (Consent Orders or COs) and enforcement order (EO) issued by the Allegheny County Health Department (ACHD). These four sources are located in the Pittsburgh area.

II. Summary of the SIP Revisions

A. Ashland Chemical Corporation

Ashland Chemical Corporation (Ashland) is a synthetic organic chemical manufacturing facility located in Pittsburgh, Allegheny County, Pennsylvania. Ashland is a major VOC and NO_X emitting facility. In this instance, RACT has been established and imposed by ACHD in CO 227. On July 1, 1997, PADEP submitted CO 227 to EPA on behalf of the ACHD as a SIP revision. Under CO 227, Ashland must operate and maintain all VOC and NO_X emission units according to good engineering and air pollution control practices. Ashland must not at any time, with the exception of activities to mitigate emergency conditions, operate the maleic anhydride refinery still while generating VOC emissions unless all such VOC emissions are exhausted to the existing secondary condenser system on the still vacuum system vent or to, at a minimum, an equivalent control device. The maleic anhydride refinery still vacuum system vent secondary condenser system must at all times be properly operated and maintained, with the exception of activities to mitigate emergency conditions. Coolant must be cycled through the facility's coolant system which will be properly operated and maintained at ambient conditions. At no time will coolant inlet temperature be required to be less than 50 degrees Fahrenheit. CO 227 requires that the NO_X emissions from the main boiler not exceed 0.16 lbs/MMBTU and 79 tons per year (tpy). CO 227 also requires Ashland to conduct NO_X emissions testing every two years in accordance with EPA approved test methods and section 2108.02 of Article XXI of the County's air pollution control regulations. The maximum annual operation of the backup boiler must be limited to 500 hours/year. If the backup boiler exceeds 500 hours in any 12 month period, an annual adjustment or tuneup on the combustion process must be conducted to include, at a minimum: (a) Inspection, adjustment, cleaning, or replacement of fuel-burning equipment; (b) inspection of the flame pattern or characteristics and adjustments necessary to minimize total emissions of NO_X; and (c) inspection of the air-to-fuel ratio control system and adjustments necessary to ensure proper calibration and operation. Ashland must keep records of the tuneup that includes, but not limited to the following: (a) The date of the adjustment procedure; (b) the name of the service company and technicians or Ashland personnel; (c) the final operating rate or load after adjustment; (d) the final NO_X emission rates after adjustment; and (e) the final excess oxygen rate after adjustment. CO 227 requires Ashland to maintain records of fuel type and usage for the equipment of the following: (1) Main boiler; (2) backup boiler when operation exceeds 500 hours in any twelve month period; (3) polyester resin plant hot oil heater and thermal oxidizer; and (4) maleic anhydride plant thermal oxidizer. Records must include certifications from fuel suppliers for all types of liquid fuel. For each shipment of distillate oils number 1 or 2, a certification that the fuel complies with ASTM D396–78, ''Standards Specifications for Fuel Oils'' is required. For residual oils, minimum record keeping includes a certification of the nitrogen content of the fuel, and identification of the sampling method and sampling protocol. CO 227 requires Ashland to properly operate and maintain the polyester resin plant oxidizer at all times while processing VOC emissions, with the exception of activities to mitigate emergency conditions, according to the following operating parameters: (1) A minimum destruction efficiency of 95 percent; (2) a minimum operating temperature of 1400 degrees Fahrenheit; and (3) a minimum residence time of one-half seconds at all times. The subject thermal oxidizer shall be equipped with instrumentation that will continuously monitor and record the oxidizer operating temperature. Ashland is also required to conduct emission testing every five years in accordance with EPA approved test methods and section 2107.04 of Article XXI. CO 227 requires Ashland to properly operate and

maintain the maleic anhydride oxidizer at all times while processing VOC emissions, with the exception of activities to mitigate emergency conditions, according to the following operating parameters: (1) A minimum destruction efficiency of 98 percent; (2) a minimum operating temperature of 1442 degrees Fahrenheit, plus or minus 25 degrees Fahrenheit; and (3) a minimum residence time of one-half seconds at all times. The subject thermal oxidizer shall be equipped with instrumentation that will continuously monitor and record the oxidizer operating temperature. Under CO 277, Ashland must maintain records to demonstrate compliance with this CO and Article XXI, section 2105.06. All records shall be retained for at least two years. Ashland is also subject to additional post-RACT requirements to reduce NO_X found at 25 PA Code Chapters 121, 123 and 145.

B. Hercules Incorporated—NO_X RACT

Hercules Incorporated (Hercules) is a synthetic hydrocarbon resin production facility located in West Elizabeth, Allegheny County, Pennsylvania. Hercules is a major NO_X emitting facility. In this instance, NO_X RACT has been established and imposed by ACHD in EO 216. On July 1, 1997, PADEP submitted EO 216 to EPA on behalf of the ACHD as a SIP revision. Hercules produces synthetic hydrocarbon resins in various batch and finishing processes which require heat at various stages in the processes. Under EO 216, the boilers at Hercules must not be allowed to operate, unless an annual adjustment or tuneup is performed on the combustion process. Such annual adjustment, or tuneup must include, but not limited to: (1) Inspection, adjustment, cleaning, or replacement of fuel-burning equipment, including the burners and moving parts necessary for proper operation as specified by the manufacturer; (2) inspection of the flame pattern or characteristics and adjustments necessary to minimize total emissions of NO_X; and (3) inspection of the air-to-fuel ratio control system and adjustments necessary to ensure proper calibration and operation as specified by the manufacturer. Under EO 216, Hercules shall not allow any time process operations at the facility unless the following records, at a minimum, are contained in Hercules' operating record for boilers 1–5: (1) The date of the adjustment procedure; (2) the name of the service company and technicians; (3) the operating rate or load after adjustment; (4) NO_X emission rate after adjustment; and (e) the excess oxygen rate after adjustment. EO 216 does not allow equipment to operate unless they are being maintained and operated with good engineering practice and within the manufacturer's specifications. Under EO 216, Hercules must maintain records to demonstrate compliance with this CO and Article XXI, section 2105.06. EO 216 requires Hercules to maintain records of fuel type and usage for each combustion unit including certifications from fuel suppliers for all types of liquid fuel. For each shipment of distillate oils number 1 or 2, a certification that the fuel complies with ASTM D396–78, ''Standards Specifications for Fuel Oils'' is required. For residual oils, minimum record keeping includes a certification from the fuel supplier from the nitrogen content of the fuel, and identification of the sampling method and sampling protocol. For fuels which are by-products of Hercules' processes, the record keeping shall include the nitrogen content of the fuel, as analyzed according to section 2107.01 of Article XXI. All records shall be retained for at least two years. Hercules is also subject to additional post-RACT requirements to reduce NO_X found at 25 PA Code Chapters 121, 123 and 145.

C. Hercules Incorporated—VOC RACT

As stated above, Hercules Incorporated (Hercules) is a synthetic hydrocarbon resin production facility located in West Elizabeth, Allegheny County, Pennsylvania. Hercules is also a major VOC emitting facility. In this instance, VOC RACT has been established and imposed by ACHD in CO 257. On July 1, 1997 and April 19, 2001, PADEP submitted this CO 257 to EPA on behalf of the ACHD as a SIP revision. The facility produces a variety of resins from resin oils, monomers, solvents and catalysts. Under CO 257, Hercules must at no time operate the following process equipment while generating VOC emissions unless all non-fugitive emissions are processed through cooling tower water cooled condensers: (1) V–8 polymerization unit; (2) water-white polymerization unit, (3) MP polymerization unit; (4) suspension polymerization unit; (5) pilot plant; (6) no. 3 LTC finishing unit; (7) C–5 polymerization unit; (8) Numbers 1 and 2 LTC finishing unit, and (9) C-polymerization unit. Such condensers shall be properly maintained and operated at all times while treating VOC emissions from the equipment, with the exception of activities to mitigate emergency conditions, with a coolant inlet temperature no greater than 10 degrees Fahrenheit above ambient air temperature, except that at no time will the coolant temperature be required to be less than 50 degrees Fahrenheit. Under CO 257, Hercules must at no time operate the following process equipment while generating VOC emissions unless all non-fugitive emissions are processed through refrigerated condensers. Such condensers shall be properly maintained and operated at all times while treating VOC emissions, with the exception of activities to mitigate emergency conditions, with coolant inlet temperatures of no greater than ten (10) degrees Centigrade for the MP polymerization unit process equipment and zero (0)degrees Fahrenheit for the C–5 polymerization unit process equipment. Under CO 257, Hercules must maintain records to demonstrate compliance with this CO and Article XXI, section 2105.06. Record keeping requirements must include production records and condenser coolant temperatures. All records shall be retained for at least two years. CO 257 requires Hercules to properly maintain and operate all existing process equipment and VOC control equipment at all times while such equipment is emitting VOCs, with the exception of activities to mitigate emergency situations, according to good engineering and air pollution control practices.

D. Neville Chemical Company

Neville Chemical Company (Neville) is a synthetic hydrocarbon resin production facility located in Allegheny County, Pennsylvania. Neville is a major VOC and NO_X emitting facility. In this instance, RACT has been established and imposed by ACHD in CO 230. On July 1, 1997, PADEP submitted this CO 230 to EPA on behalf of the ACHD as a SIP revision. CO 230 requires all existing VOC and NO_X emission units and control equipment be properly operated and maintained according to good engineering practices at all times, with the exception of activities to mitigate emergency conditions. Under CO 230, Neville must at no time operate the C–5 process while generating VOC emissions unless all such emissions are processed through refrigerated condensers. Such condensers shall be properly maintained and operated at all times while treating VOC emissions, with the exception of activities to mitigate emergency conditions, with an average monthly coolant inlet temperature no greater than 60 degrees Fahrenheit. Neville must at no time operate the following process equipment while generating VOC emissions unless all such emissions are processed through water-cooled

condensers. Such condensers shall be properly maintained and operated at all times while treating VOC emissions, with the exception of activities to mitigate emergency conditions, with an average monthly coolant inlet temperature no greater than 90 degrees Fahrenheit: (1) Resin rework tanks; and (2) screen cleaning unit. CO 230 requires the continuous polymerization unit No. 2 not to operate while generating VOC emissions, unless such emissions are treated by water cooled and refrigerated condensers, with the exception of activities to mitigate emergency conditions. The water cooled and refrigerated condensers shall be properly operated and maintained with average monthly coolant inlet temperatures not exceeding 90 degrees Fahrenheit and 60 degrees Fahrenheit, respectively. The packaging centers No. 2, 3 and 5 shall be properly maintained and operated at all times, with the exception of activities to mitigate emergency conditions. Proper operation shall include the use of covers on all kettles after the initial kettle charging and during process operations. CO 230 requires Neville to perform an annual adjustment or tune-up on boilers No. 4, 6, and 7 once every 12 months (annual tune-up). Such annual tune-up shall include: (1) Inspection, adjustment, cleaning, or replacement of fuel-burning equipment, including the burners and moving parts necessary for proper operation; (2) inspection of the flame pattern or characteristics and adjustments necessary to minimize total emissions of NO_X; and (3) inspection of the air-to-fuel ratio control system and adjustments necessary to ensure proper calibration and operation. Neville shall maintain the following records of the annual tune-up for the subject equipment: (1) The date of the annual tune-up; (2) the name of the service company and/or individuals performing the annual tune-up; (3) the operating rate or load after the annual tune-up; (4) NO_X emission rate after the annual tune-up; and (5) the excess oxygen rate after the annual tune-up. CO 230 requires Neville to maintain records of fuel type and usage for each combustion unit including certifications from fuel suppliers for all types of liquid fuel. For each shipment of distillate oils number 1 or 2, a certification that the fuel complies with ASTM D396–78, ''Standards Specifications for Fuel Oils'' is required. For residual oils, minimum record keeping includes a certification from the fuel supplier of the nitrogen content of the fuel, and identification of the sampling method and sampling protocol. For fuels that are co-products of the facility's processes, minimum record keeping shall include the nitrogen content of the fuel and identification of the sampling method and protocol. CO 230 requires Neville to maintain records to demonstrate compliance with this CO and Article XXI, section 2105.06. All records shall be retained for at least two years. CO 230 requires Neville to conduct a Leak Detection and Repair (LDAR) program at the facility at all times when facility operation may result in fugitive emissions of VOCs. Neville is also subject to additional post-RACT requirements to reduce NO_X found at 25 PA Code Chapters 121, 123 and 145.

III. EPA's Evaluation of the SIP Revisions

EPA is approving these RACT SIP submittals because ACHD established and imposed these RACT requirements in accordance with the criteria set forth in the SIP-approved RACT regulations applicable to these sources. The ACHD has also imposed record-keeping, monitoring, and testing requirements on these sources sufficient to determine compliance with the applicable RACT determinations.

IV. Final Action

EPA is approving the revisions to the Pennsylvania SIP submitted by PADEP on behalf of ACHD to establish and require VOC and NO_X RACT for four major sources located in the Pittsburgh area. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on September 24, 2001 without further notice unless EPA receives adverse comment by September 10, 2001. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if adverse comment is received for a specific source or subset of sources covered by an amendment, section or paragraph of this rule, only that amendment, section, or paragraph for that source or subset of sources will be withdrawn.

IV. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.'' See 66 FR 28355, May 22, 2001. 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.*).

B. 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 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability establishing source-specific requirements for four named sources.

C. Petitions for Judicial Review

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 approving the Commonwealth's source-specific RACT requirements to control VOC and NO_X from four individual sources in Pennsylvania may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Nitrogen Oxides, Ozone, Reporting and record keeping requirements.

Dated: August 3, 2001.

Thomas C. Voltaggio,

Deputy Regional Administrator, Region III.

40 CFR part 52 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 NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c)(166) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(166) Revisions pertaining to VOC and NO_X RACT for Ashland Chemical Company; Hercules, Incorporated; and Neville Chemical Company located in the Pittsburgh-Beaver Valley ozone nonattainment area, submitted by the Pennsylvania Department of Environmental Protection on July 1, 1997 and April 19, 2001.

(i) Incorporation by reference.

(A) Letters dated July 1, 1997 and April 19, 2001, submitted by the Pennsylvania Department of Environmental Protection transmitting source-specific VOC and NO_X RACT determinations.

(B) Plan Approval and Agreement Upon Consent Orders (COs) and an Enforcement Order (EO) for the following sources:

(*1*) Ashland Chemical Company, CO 227, effective December 30, 1996, except for condition 2.5.

(*2*) Hercules, Incorporated, EO 216, effective March 8, 1996.

(*3*) Hercules, Incorporated, CO 257, except for condition 2.5, effective January 14, 1997, including amendments to CO 257, effective November 1, 1999.

(*4*) Neville Chemical Company, CO 230, effective December 13, 1996, except for condition 2.5.

(ii) Additional Materials—Other materials submitted by the Commonwealth of Pennsylvania in support of and pertaining to the RACT determinations submitted for the sources listed in (i) (B), above.

[FR Doc. 01–20241 Filed 8–9–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7026–1]

New Mexico: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: The State of New Mexico has applied for Final authorization of its revisions to its Hazardous Waste Program under the Resource Conservation and Recovery Act (RCRA). The EPA has determined that these revisions satisfy all requirements needed to qualify for Final authorization, and is authorizing the State's revisions through this immediate final action. The EPA is publishing this rule to authorize the revisions without a prior proposal because we believe this action is not controversial and do not expect adverse comments. Unless we get adverse comments which oppose this authorization during the comment period, the decision to authorize the New Mexico Environment Department's (NMED) revisions to their hazardous waste program will take effect. If adverse comments are received, we will publish a document in the **Federal Register** either: A withdrawal of the immediate Final decision and a separate document in the proposed rules section of this **Federal Register** will serve as a proposal to authorize the changes, or a document containing a response to comments and which either affirms that the immediate Final decision takes effect or reverses the decision.

DATES: This immediate final rule is effective on October 9, 2001 unless EPA receives adverse written comments by September 10, 2001. Should EPA receive such comments, it will publish a timely document either: Withdrawing the immediate final publication or affirming the publication and responding to comments.

ADDRESSES: Written comments, referring to Docket Number NM–00–1, should be sent to Alima Patterson, Region 6 Regional Authorization Coordinator, Grants and Authorization Section (6PD–

G), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733. Copies of New Mexico program revision application and the materials which EPA used in evaluating the revision are available for inspection and copying from 8:30 a.m. to 4 p.m. Monday through Friday at the following addresses: New Mexico Environment Department, 2044 Galisteo, Santa Fe, New Mexico 87505, phone (505) 827–1561 and EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–6444.

FOR FURTHER INFORMATION CONTACT: Alima Patterson (214) 665–8533.

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

States that receive final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal Hazardous Waste Program. As the Federal program changes, states must change their programs and ask EPA to authorize the changes. Changes to state programs may be necessary when federal or state statutory or regulatory authority is modified or when certain other changes occur. Most commonly, states must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260–266, 268, 270, 273.

B. What Is the Effect of Today's Authorization Decision?

The effect of this decision is that a facility in New Mexico, subject to RCRA, will have to comply with the authorized state requirements (in RCRA Clusters V–IX listed in this document) instead of the equivalent federal requirements in order to comply with RCRA. New Mexico has enforcement responsibilities under its state hazardous waste program for violations of such program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to: (1) Do inspections, and require monitoring, tests, analyses or reports, (2) enforce RCRA requirements and suspend or revoke permits, and (3) take enforcement actions regardless of whether the State has taken its own actions. This action does not impose additional requirements on the regulated community because the regulations for which New Mexico is being authorized by today's action are already effective, and are not changed by today's action.

C. What Is the History of New Mexico's Final Authorization and Its Revisions?

The State of New Mexico received authorization January 25, 1985, (50 FR 1515) to implement its base hazardous waste management program. New Mexico received authorization for revisions to its program on February 9, 1990 (55 FR 4604) effective April 10, 1990; July 11, 1990 (55 FR 28397) effective July 25, 1990; October 5, 1992 (57 FR 45717) effective December 4, 1992; June 9, 1994 (59 FR 29734) effective August 23, 1994; October 7, 1994 (59 FR 51122) effective December 21, 1994; April 25, 1995 (60 FR 20238) effective July 10, 1995; October 17, 1995 (61 FR 2450) effective January 2, 1996 and December 23, 1996 (61 FR 67474) effective March 10, 1997. The authorized New Mexico RCRA program was incorporated by reference to the CFR, effective December 13, 1993 (58 FR 52677); November 18, 1996 (61 FR 49265) and July 13, 1998 (63 FR 23221). On October 11, 2000, New Mexico submitted a final complete program revision application, seeking authorization of its program revision in accordance with 40 § CFR 271.21. The State of New Mexico also has adopted the regulations for Import and Export of Hazardous Waste. However, the requirements of the Import and Export regulations will be administered by EPA and not the State because the exercise of foreign relations and international commerce powers is reserved to the Federal government under the United States Constitution. Therefore, the State of New Mexico is not seeking authorization for this rule.

On April 14, 2000, New Mexico promulgated 20 New Mexico Administrative Code (NMAC) 4.1 which adopts the July 1, 1999, version of 40 CFR parts 260–273 and part 124. Specifically, 20 NMAC 4.1 incorporates by reference 40 CFR parts 260–273 and part 124 at 20 NMAC 4.1.100–1000 and 20 NMAC 1102. This is the version that is referred to in the Attorney

General's Statement submitted with this program revision. 20 NMAC 4.1. became effective on June 14, 2000. New Mexico Statutes Annotated (NMAC) 1978 sections 74–4–4A(1) and 74–4–4E (Replacement Pamphlet 1993) provides New Mexico with authority to adopt federal regulations by reference with exception of federal rules that are not delegable to the State of New Mexico.

D. What Changes Are We Authorizing With Today's Action?

On October 11, 2000, the State of New Mexico submitted a final complete program revisions application, seeking authorization of their revisions in accordance with 40 CFR 271.21. We now make an immediate final decision, subject to receipt of adverse comments, that the State of New Mexico's hazardous waste program revision satisfies all the requirements necessary to qualify for final authorization. New Mexico's revisions consist of regulations which specifically govern Federal Hazardous Waste promulgated from July 1, 1994 through June 30, 1999 (RCRA Clusters V–IX). New Mexico requirements are included in a chart with this document. In addition, as a result of today's final authorization of New Mexico for the February 16, 1993; Corrective Action Management Unit (CAMU) rule, the State will be eligible for interim authorization-by-rule for the proposed amendments to the CAMU rule, which also proposed the interim authorization-by-rule process (see August 22, 2000, 65 FR 51080). New Mexico will also become eligible for conditional authorization if that alternative is chosen by EPA in the final CAMU amendments rule.

Federal citation	State analog
1. Corrective Action Management Units and Temporary Units; Corrective Action Provisions Under Subtitle C, [58 FR 8658] February 16, 1993. (Checklist 121).	New Mexico Statute Annotated (NMSA) 1978, §§ 74–4–4A and 74–4–4E (Replacement (Repl.) 1993). Hazardous Waste Regulations (HWMR), New Mexico Environmental Improvement Board, 20 NMAC 4.1.100, 101, 500, 501, 600, 601, 801, 900 and 901, as amended effective June 14, 2000.
2. Identification and Listing of Hazardous Waste; Amendments to Definitions of Solid Waste, [59 FR 38536] July 28, 1994. (Checklist 135).	NMSA 1978, §§ 74–4–4A and 74–4–4E (Repl. 1993). HWMR, New Mexico Environmental Improvement Board, 20 NMAC 4.1.200, as amended effective June 14, 2000.

Federal citation	State analog
3. Standards for the Management of Specific Hazardous Wastes Amendment to Subpart C—Recyclable Materials Used in a Manner Constituting Disposal Final Rule, [59 FR 43496] August 24, 1994. (Checklist 136).	NMSA 1978 §§ 74–4–4A and 74–4–4E (Repl. 1993). HWMR, New Mexico Environmental Improvement Board, 20 NMAC 4.1.500, 501, 600 and 601, as amended effective June 14, 2000.
4. Land Disposal Restrictions Phase II—Universal Treatment Standards, and Treatment Standards for Organic Toxicity Characteristic Wastes and Newly Listed Waste, [59 FR 47982] September 19, 1994. (Checklist 137).	NMSA 1978 §§ 74–4–4A and 74–4–4E (Repl. 1993). HWMR, New Mexico Environmental Improvement Board, 20 NMAC 4.1.700, 800 and 801 as amended effective June 14, 2000.
5. Technical Amendment to the Universal Treatment Standards and Treatment Standards for Organic Toxicity Characteristic Wastes and Newly Listed Waste, [60 FR 242], January 3, 1995. (Checklist 137.1).	NMSA 1978, §§ 74–4–4A and 74–4–4E (Repl. 1993). HWMR, New Mexico Environmental Improvement Board, 20 NMAC 4.1.700, 800 and 801 as amended effective June 14, 2000.
6. Hazardous Waste Management System: Testing and Monitoring Activities—Amendment I, [60 FR 3089] January 13, 1995. (Checklist 139).	NMSA 1978, §§ 74–4–4A and 74–4–4E (Repl. 1993.) HWMR, New Mexico Environmental Improvement Board, 20 NMAC 4.1.100, 101, as amended effective June 14, 2000.
7. Hazardous Waste Management System; Carbamate Production Identification Listing of Hazardous Waste and CERCLA Hazardous Substance Designation and Reportable Quantities, [60 FR 7824] February 9, 1995. (Checklist 140).	NMSA 1978, §§ 74–4–4A and 74–4–4E (Repl. 1993). HWMR, New Mexico Environmental Improvement Board, 20 NMAC 4.1.200, as amended effective June 14, 2000.
8. Hazardous Waste Management Systems; Carbamate Production Identification and Listing of Hazardous Waste; and CERCLA Hazardous Substance Designation and Reportable Quantities; Correction, [60 FR 19165] April 17, 1995. (Checklist 140.1).	NMSA 1978, §§ 74–4–4A and 74–4–4E (Repl. 1993). HWMR, New Mexico Environmental Improvement Board, 20 NMAC 4.1.200, as amended effective June 14, 2000.
9. Hazardous Waste Management Systems; Carbamate Production Identification and Listing of Hazardous Waste; and CERCLA Hazardous Substance Designation and Reportable Quantities; Correction, [60 FR 25619] May 12, 1995. (Checklist 140.2).	NMSA 1978, §§ 74–4–4A and 74–4–4E (Repl. 1993). HWMR, New Mexico Environmental Improvement Board, 20 NMAC 4.1.200, as amended effective June 14, 2000.
10. Hazardous Waste Management System; Testing Monitoring Activities—Amendment 2, [60 FR 17001] April 4, 1995. (Checklist 141).	NMSA 1978, §§ 74–4–4A and 74–4–4E (Repl. 1993). HWMR, New Mexico Environmental Improvement Board, 20 NMAC 4.1.100, 101, as amended effective June 14, 2000.
11. Universal Waste Rule (Hazardous Waste Management System: Modification of the Hazardous Waste Recycling Regulatory Program); Final Rule, [60 FR 25492] May 11, 1995. (Checklist 142 A).	NMSA 1978, §§ 74–4–4A and 74–4–4E (Repl. 1993). HWMR, New Mexico Environmental Improvement Board, 20 NMAC 4.1.100, 101, 200, 300, 500, 501, 600, 601, 800, 801, 900, 901, 1000, and 1001, as amended effective June 14, 2000.
12. Universal Waste Rule (Hazardous Waste Management System: Modification of the Hazardous Waste Recycling Regulatory Program); Final Rule, [60 FR 25492] May 11, 1995. (Checklist 142 B).	NMSA 1978, §§ 74–4–4A and 74–4–4E (Repl. 1993). HWMR, New Mexico Environmental Improvement Board, 20 NMAC 4.1.100, 200, 500, 600, 700, 800, and 1000, as amended effective June 14, 2000.
13. Universal Waste Rule (Hazardous Waste Management System: Modification of the Hazardous Waste Recycling Regulatory Program); Final Rule, [60 FR 25492] May 11, 1995. (Checklist 142 C).	NMSA 1978, §§ 74–4–4A and 74–4–4E (Repl. 1993). HWMR, New Mexico Environmental Improvement Board, 20 NMAC 4.1.100, 101, 200, 500, 501, 600, 601, 700, 800, 801, 1000, and 1001, as amended effective June 14, 2000.
14. Universal Waste Rule (Hazardous Waste Management System: Modification of the Hazardous Waste Recycling Regulatory Program); Final Rule, [60 FR 25492] May 11, 1995. (Checklist 142 D).	NMSA 1978, §§ 74–4–4A and 74–4–4E (Repl. 1993). HWMR, New Mexico Environmental Improvement Board, 20 NMAC 4.1.100, 101, 200, 500, 501, 600, 601, 800, 801, 1000, and 1001, as amended effective June 14, 2000.
15. Solid Waste, Hazardous Waste, Oil Discharge and Superfund Programs: Removal of Legally Obsolete Rules, [60 FR 33912] June 29, 1995. (Checklist 144).	NMSA 1978, §§ 74–4–4A and 74–4–4E (Repl. 1993). HWMR, New Mexico Environmental Improvement Board, 20 NMAC 4.1.200, 700, 701, 900, and 901, as amended effective June 14, 2000.
16. Hazardous Waste Management: Liquids in Landfills, [60 FR 35703] July 11, 1995. (Checklist 145).	NMSA 1978, §§ 74–4–4A and 74–4–4E (Repl. 1993). HWMR, New Mexico Environmental Improvement Board, 20 NMAC 4.1.500, 501, 600, and 601, as amended effective June 14, 2000.
17. RCRA Expanded Public Participation, [60 FR 63417] December 11, 1995. (Checklist 148).	NMSA 1978, §§ 74–4–4A and 74–4–4E (Repl. 1993). HWMR, New Mexico Environmental Improvement Board, 20 NMAC 4.1.1102, 900, and 901, as amended effective June 14, 2000.
18. Land Disposal Restrictions Phase III—Decharacterized; Wastewater, Carbamate Wastes, and Spent Potliners, [61 FR 15566] April 8, 1996. (Checklist 151).	NMSA 1978, §§ 74–4–4A and 74–4–4E (Repl. 1993). HWMR, New Mexico Environmental Improvement Board, 20 NMAC 4.1.800 and 801, as amended effective June 14, 2000.
19. Land Disposal Restrictions Phase III—Decharacterized; Wastewater, Carbamate Wastes, and Spent Potliners, [61 FR 15660] April 8, 1996. (Checklist 151.1).	NMSA 1978, §§ 74–4–4A and 74–4–4E (Repl. 1993). HWMR, New Mexico Environmental Improvement Board, 20 NMAC 4.1.800 and 801, as amended effective June 14, 2000.
20. Land Disposal Restrictions Phase III—Decharacterized; Wastewater, Carbamate Wastes, and Spent Potliners, [61 FR 19117] April 30, 1996. (Checklist 151.2).	NMSA 1978, §§ 74–4–4A and 74–4–4E (Repl. 1993). HWMR, New Mexico Environmental Improvement Board, 20 NMAC 4.1.800 and 801, as amended effective June 14, 2000.
21. Land Disposal Restrictions Phase III—Decharacterized; Wastewater, Carbamate Wastes, and Spent Potliners Technical Correction, [61 FR 33680] June 28, 1996. (Checklist 151.3).	NMSA 1978, §§ 74–4–4A and 74–4–4E (Repl. 1993). HWMR, New Mexico Environmental Improvement Board, 20 NMAC 4.1.800 and 801, as amended effective June 14, 2000.
22. Land Disposal Restrictions Phase III—Decharacterized; Wastewater, Carbamate Wastes, and Spent Potliners, [61 FR 36419] July 10, 1996. (Checklist 151.4).	NMSA 1978, §§ 74–4–4A and 74–4–4E (Repl. 1993). HWMR, New Mexico Environmental Improvement Board, 20 NMAC 4.1.800 and 801, as amended effective June 14, 2000.
23. Land Disposal Restrictions Phase III—Treatment Standards for Listed Hazardous Waste From Carbamate Production, [61 FR 43924] August 26, 1996. (Checklist 151.5).	NMSA 1978, §§ 74–4–4A and 74–4–4E (Repl. 1993). HWMR, New Mexico Environmental Improvement Board, 20 NMAC 4.1.800 and 801, as amended effective June 14, 2000.

Federal citation	State analog
24. Land Disposal Restrictions; Correction of Tables; Treatment Standards for Hazardous Wastes and Universal Treatment Standards, [62 FR 7502] February 19, 1997. (Checklist 151.6).	NMSA 1978, §§ 74–4–4A and 74–4–4E (Repl. 1993). HWMR, New Mexico Environmental Improvement Board, 20 NMAC 4.1.800 and 801, as amended effective June 14, 2000.
25. Criteria Classification of Solid Waste Disposal Facilities and Practices; Identification and Listing of Hazardous Waste, Requirements for Authorization of State Hazardous Waste Programs, [61 FR 34252] July 1, 1996. (Checklist 153).	NMSA 1978, §§ 74–4–4A and 74–4–4E (Repl. 1993). HWMR, New Mexico Environmental Improvement Board, 20 NMAC 4.1.200, as amended effective June 14, 2000.
26. Hazardous Waste Treatment, Storage and Disposal, Facilities and Hazardous Waste Generators; Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers, [61 FR 59931] November 25, 1996. (Checklist 154).	NMSA 1978, §§ 74–4–4A and 74–4–4E (Repl. 1993). HWMR, New Mexico Environmental Improvement Board, 20 NMAC 4.1.200, 300, 500, 501, 600, 601, 900 and 901, as amended effective June 14, 2000.
27. Hazardous Waste Treatment, Storage and Disposal, Facilities and Hazardous Waste Generators; Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers, [61 FR 62896] December 6, 1994. (Checklist 154.1).	NMSA 1978, §§ 74–4–4A and 74–4–4E (Repl. 1993). HWMR, New Mexico Environmental Improvement Board, 20 NMAC 4.1.200, 300, 500, 501, 600, 601, 900 and 901, as amended effective June 14, 2000.
28. Hazardous Waste Treatment, Storage and Disposal, Facilities and Hazardous Waste Generators; Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers, [60 FR 26828] May 19, 1994. (Checklist 154.2).	NMSA 1978, §§ 74–4–4A and 74–4–4E (Repl. 1993). HWMR, New Mexico Environmental Improvement Board, 20 NMAC 4.1.200, 300, 500, 501, 600, 601, 900 and 901, as amended effective June 14, 2000.
29. Hazardous Waste Treatment, Storage and Disposal, Facilities and Hazardous Waste Generators; Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers, [60 FR 50426] September 29, 1995. (Checklist 154.3).	NMSA 1978, §§ 74–4–4A and 74–4–4E (Repl. 1993). HWMR, New Mexico Environmental Improvement Board, 20 NMAC 4.1.200, 300, 500, 501, 600, 601, 900 and 901, as amended effective June 14, 2000.
30. Hazardous Waste Treatment, Storage and Disposal, Facilities and Hazardous Waste Generators; Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers, [60 FR 56952] November 13, 1995. (Checklist 154.4).	NMSA 1978, §§ 74–4–4A and 74–4–4E (Repl. 1993). HWMR, New Mexico Environmental Improvement Board, 20 NMAC 4.1.200, 300, 500, 501, 600, 601, 900 and 901, as amended effective June 14, 2000.
31. Hazardous Waste Treatment, Storage and Disposal, Facilities and Hazardous Waste Generators; Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers, [61 FR 4903] February 9, 1996. (Checklist 154.5).	NMSA 1978, §§ 74–4–4A and 74–4–4E (Repl. 1993). HWMR, New Mexico Environmental Improvement Board, 20 NMAC 4.1.200, 300, 500, 501, 600, 601, 900 and 901, as amended effective June 14, 2000.
32. Hazardous Waste Treatment, Storage and Disposal, Facilities and Hazardous Waste Generators; Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers, [61 FR 28508] June 5, 1996. (Checklist 154.6).	NMSA 1978, §§ 74–4–4A and 74–4–4E (Repl. 1993). HWMR, New Mexico Environmental Improvement Board, 20 NMAC 4.1.200, 300, 500, 501, 600, 601, 900 and 901, as amended effective June 14, 2000.
33. Land Disposal Restrictions Phase III—Emergency Extension of the K088 Capacity Variance, [62 FR 1992] January 14, 1997. (Checklist 155).	NMSA 1978, § 74–4–4A and 74–4–4E (Repl. 1993). HWMR, New Mexico Environmental Improvement Board, 20 NMAC 4.1.800 and 801, as amended effective June 14, 2000.
34. Military Munitions Rule; Hazardous Waste Identification and Management; Explosives Emergencies; Manifest Exemption for Transport of Hazardous Waste on Right-of-Ways on Contiguous Properties, [62 FR 6622] February 12, 1997. (Checklist 156).	NMSA 1978, §§ 74–4–4A and 74–4–4E (Repl. 1993). HWMR, New Mexico Environmental Improvement Board, 20 NMAC 4.1.100, 101, 200, 300, 400, 500, 501, 600, 601, and 700, as amended effective June 14, 2000.
35. Land Disposal Restrictions—Phase IV; Treatment Standards for Wood Preserving Wastes, Paperwork Reduction Streamlining, Exemptions From RCRA for Certain Processed Materials; and Miscellaneous Hazardous Waste Provisions, [62 FR 25998] May 12, 1997. (Checklist 157).	NMSA 1978, §§ 74–4–4A and 74–4–4E (Repl. 1993). HWMR, New Mexico Environmental Improvement Board, 20 NMAC 4.1.800 and 801, as amended effective June 14, 2000.
36. Hazardous Waste Management System; Testing and Monitoring Activities, [62 FR 32452] June 13, 1997. (Checklist 158).	NMSA 1978, §§ 74–4–4A and 74–4–4E (Repl. 1993). HWMR, New Mexico Environmental Improvement Board, 20 NMAC 4.1.100, 101, 500, 600, 601, and 700 as amended effective June 14, 2000.
37. Hazardous Waste Management System; Carbamate Production; Identification and Listing of Hazardous Waste; Land Disposal Restrictions, [62 FR 32974] June 17, 1997. (Checklist 159).	NMSA 1978, §§ 74–4–4A and 74–4–4E (Repl. 1993). HWMR, New Mexico Environmental Improvement Board, 20 NMAC 4.1.800 and 801, as amended effective June 14, 2000.
38. Land Disposal Restrictions Phase III—Emergency Extension of the K088 National Capacity Variance, [62 FR 37694] July 14, 1997. (Checklist 160).	NMSA 1978, §§ 74–4–4A and 74–4–4E (Repl. 1993). HWMR, New Mexico Environmental Improvement Board, 20 NMAC 4.1.800, and 801, as amended effective June 14, 2000.
39. Second Emergency Revision of the Land Disposal Restrictions (LDR) Treatment Standards for Listed Hazardous Wastes From Carbamate Production, [62 FR 45568] August 28, 1997 (Checklist 161).	NMSA 1978, §§ 74–4–4A and 74–4–4E (Repl. 1993). HWMR, New Mexico Environmental Improvement Board, 20 NMAC 4.1.800, and 801, as amended effective June 14, 2000.
40. Clarification of Standards for Hazardous Waste LDR Treatment Variance, [62 FR 64504] December 5, 1997. (Checklist 162).	NMSA 1978, §§ 74–4–4A and 74–4–4E (Repl. 1993). HWMR, New Mexico Environmental Improvement Board, 20 NMAC 4.1.800, and 801, as amended effective June 14, 2000.
41. Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers; Clarification and Technical Amendment, [62 FR 64636] December 8, 1997. (Checklist 163).	NMSA 1978, §§ 74–4–4A and 74–4–4E (Repl. 1993). HWMR, New Mexico Environmental Improvement Board, 20 NMAC 4.1.200, 300, 500, 501, 600, 601, 900, and 901, as amended effective June 14, 2000.
42. Kraft Mill Steam Stripper Condensate Exclusion, [64 FR 18504] April 15, 1998. (Checklist 164).	NMSA 1978, §§ 74–4–4A and 74–4–4E (Repl. 1993). HWMR, New Mexico Environmental Improvement Board, 20 NMAC 4.1.200, as amended effective June 14, 2000.
43. Land Disposal Restrictions Phase IV—Treatment Standards for Metal Wastes and Mineral Processing Wastes, [63 FR 28556] May 26, 1998. (Checklist 167 A).	NMSA 1978, §§ 74–4–4A and 74–4–4E (Repl. 1993). HWMR, New Mexico Environmental Improvement Board, 20 NMAC 4.1.800, and 801, as amended effective June 14, 2000.

Federal citation	State analog
44. Land Disposal Restrictions Phase IV—Hazardous Soils Treatment Standards and Exclusions, [63 FR 28556] May 26, 1998. (Checklist 167 B).	NMSA 1978, §§ 74–4–4A and 74–4–4E (Repl. 1993). HWMR, New Mexico Environmental Improvement Board, 20 NMAC 4.1.300, 301, 800, and 801, as amended effective June 14, 2000.
45. Land Disposal Restrictions Phase IV—Corrections, [63 FR 28556] May 26, 1998. (Checklist 167 C).	NMSA 1978, §§ 74–4–4A and 74–4–4E (Repl. 1993). HWMR, New Mexico Environmental Improvement Board, 20 NMAC 4.1.800 and 801, as amended effective June 14, 2000.
46. Land Disposal Restrictions Phase IV—Corrections, [63 FR 31266] June 9, 1998. (Checklist 167 C.1).	NMSA 1978, §§ 74–4–4A and 74–4–4E (Repl. 1993). HWMR, New Mexico Environmental Improvement Board, 20 NMAC 4.1.800 and 801, as amended effective June 14, 2000.
47. Bevill Exclusion Revisions and Clarification, [63 FR 28556] May 26, 1998. (Checklist 167 E).	NMSA 1978, §§ 74–4–4A and 74–4–4E (Repl. 1993). HWMR, New Mexico Environmental Improvement Board, 20 NMAC 4.1.200, as amended effective June 14, 2000.
48. Exclusion of Recycled Wood Preserving Wastewaters, [63 FR 28556] May 26, 1998. (Checklist 167 F).	NMSA 1978, §§ 74–4–4A and 74–4–4E (Repl. 1993). HWMR, New Mexico Environmental Improvement Board, 20 NMAC 4.1.200, as amended effective June 14, 2000.
49. Hazardous Waste Combustors Revised Standards, [63 FR 33782] June 19, 1998. (Checklist 168).	NMSA 1978, §§ 74–4–4A and 74–4–4E (Repl. 1993). HWMR, New Mexico Environmental Improvement Board, 20 NMAC 4.1.200, as amended effective June 14, 2000.
50. Petroleum Refining Process, [63 FR 42110] August 6, 1998. (Checklist 169).	NMSA 1978, §§ 74–4–4A and 74–4–4E (Repl. 1993). HWMR, New Mexico Environmental Improvement Board, 20 NMAC 4.1.200, 700, 800, and 801, as amended effective June 14, 2000.
51. Petroleum Refining Waste Process, [63 FR 54356] October 9, 1998. (Checklist 169.1).	NMSA 1978, §§ 74–4–4A and 74–4–4E (Repl. 1993). HWMR, New Mexico Environmental Improvement Board, 20 NMAC 4.1.200, 700, 800, and 801, as amended effective June 14, 2000.
52. Land Disposal Restrictions—Phase IV, [63 FR 46332] August 31, 1998. (Checklist 170).	NMSA 1978, §§ 74–4–4A and 74–4–4E (Repl. 1993). HWMR, New Mexico Environmental Improvement Board, 20 NMAC 4.1.800, and 801, as amended effective June 14, 2000.
53. Emergency Revisions of LDR Treatment Standards, [63 FR 47409] September 4, 1998. (Checklist 171).	NMSA 1978, §§ 74–4–4A and 74–4–4E (Repl. 1993). HWMR, New Mexico Environmental Improvement Board, 20 NMAC 4.1.800, and 801, as amended effective June 14, 2000.
54. Emergency Revisions of LDR Treatment Standards, [63 FR 47124] September 9, 1998. (Checklist 172).	NMSA 1978, §§ 74–4–4A and 74–4–4E (Repl. 1993). HWMR, New Mexico Environmental Improvement Board, 20 NMAC 4.1.800, and 801, as amended effective June 14, 2000.
55. Land Disposal Restrictions Treatment Standards Spent Potliners from Primary Aluminum Reduction (K088); Final Rule, [63 FR 51254] September 24, 1998. (Checklist 173).	NMSA 1978, §§ 74–4–4A and 74–4–4E (Repl. 1993). HWMR, New Mexico Environmental Improvement Board, 20 NMAC 4.1.800, and 801, as amended effective June 14, 2000.
56. Standards Applicable to Owners and Operators of Closed/Closing Facilities, [63 FR 56710] October 22, 1998. (Checklist 174).	NMSA 1978, §§ 74–4–4A and 74–4–4E (Repl. 1993). HWMR, New Mexico Environmental Improvement Board, 20 NMAC 4.1.500, 501, 600, 601, 900 and 901, as amended effective June 14, 2000.
57. Universal Waste Rule; Technical Amendment (Conditionally Optional), [63 FR 71225] December 24, 1998. (Checklist 176).	NMSA 1978, §§ 74–4–4A and 74–4–4E (Repl. 1993). HWMR, New Mexico Environmental Improvement Board, 20 NMAC 4.1.100, 101, 200, 300, 500, 501, 600, 601, 800, 801, 900, 901, 1000 and, 1001, as amended effective June 14, 2000.
58. Organic Air Emission Standards, [64 FR 3381] January 21, 1999. (Checklist 177).	NMSA 1978, §§ 74–4–4A and 74–4–4E (Repl. 1993). HWMR, New Mexico Environmental Improvement Board, 20 NMAC 4.1.200, 300, 500, 501, 600, 601, 900, and 901, as amended effective June 14, 2000.
59. Petroleum Refining Process Wastes, [64 FR 6806] February 11, 1999. (Checklist 178).	NMSA 1978, §§ 74–4–4A and 74–4–4E (Repl. 1993). HWMR, New Mexico Environmental Improvement Board, 20 NMAC 4.1.200, as amended effective June 14, 2000.
60. Land Disposal Restrictions Phase IV–Treatment Corrections and Clarifications to Treatment Standards, [64 FR 25408] May 11, 1999. (Checklist 179).	NMSA 1978, §§ 74–4–4A and 74–4–4E (Repl. 1993). HWMR, New Mexico Environmental Improvement Board, 20 NMAC 4.1.300, 301, 800 and 801, as amended June 14, 2000.
61. Test Procedures for the Analysis of Oil and Grease and Non-Polar Material, [64 FR 26315] May 14, 1999. (Checklist 180).	NMSA 1978, §§ 74–4–4A and 74–4–4E (Repl. 1993). HWMR, New Mexico Environmental Improvement Board, 20 NMAC 4.1100 and 101, as amended effective June 14, 2000.

E. What Is the Relationship Between the Resource Conservation and Recovery Act and the Hazardous Waste Combustor MACT? How Does This Affect Delegation of This Standard to NMED's Authorization?

In this authorization document, the State of New Mexico is also seeking authorization for the Post-Closure Permit Requirement and Closure Process, (Checklist 174). On September 30, 1999, the EPA finalized the National Emission Standards for Hazardous Air Pollutants (NESHAP) for three categories of hazardous waste combustors (HWCs): incinerators, cement kilns and light-weight aggregate kilns (64 FR 52828). The EPA promulgated this rule under joint authority of the Clean Air Act (CAA) and RCRA. Before this rule went into effect, the air emissions from these three types of HWCs was primarily regulated under the authority of RCRA (see 40 CFR parts 264, 265, 266, and 270). However, with the release of the final HWC NESHAP (see 40 CFR part 63, subpart EEE), the air emissions from these sources is now regulated under RCRA and the CAA. Even though both statutes give us the authority to regulate these emissions, we determined that having emission standards and permitting requirements in both sets of implementing regulations would be duplicative. For this reason, using the authority provided by section 1006(b) of RCRA, we deferred the RCRA requirements for HWC emission

controls to the CAA requirements of 40 CFR part 63, subpart EEE.

Therefore, with today's authorization of the State of New Mexico for the RCRA provisions of the September 30, 1999, HWC NESHAP rule, the RCRA waste management standards for air emissions from these units will no longer apply after the facility has demonstrated compliance with 40 CFR part 63, subpart EEE. One notable exception concerns section 3005(c)(3) of RCRA, which requires that each RCRA permit contain the terms and conditions necessary to protect human health and the environment. Under this provision of RCRA, if a regulatory authority determines that more stringent conditions than the HWC NESHAP are necessary to protect human health and environment for a particular facility, then the regulatory authority may impose those conditions in the facility's RCRA permit. (See the HWC MACT rule preamble discussion on the interrelationship of the MACT rule with the RCRA Omnibus provision and site specific risk assessment at 64 FR 52828, 52839–52843, September 30, 1999, and RCRA Site-Specific Risk Assessment Policy for Hazardous Waste Combustion Facilities dated June 2000 for more information).

F. What Decisions Has EPA Made?

We conclude that New Mexico's application for program revision meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant New Mexico final authorization to operate its hazardous waste program with the changes described in the authorization application. New Mexico is responsible for permitting treatment, storage, and disposal facilities within its borders (except in Indian Country) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of Solid Waste Amendments of 1984 (HSWA). New federal requirements and prohibitions imposed by federal regulations that EPA promulgates under the authority of HSWA take effect in authorized states before they are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in New Mexico, including issuing permits, until the State is granted authorization to do so.

G. How Do The Revised State Rules Differ From The Federal Rules?

In this authorization of the State of New Mexico's program revisions for RCRA Clusters V–IX, there are no provisions that are more stringent or broader in scope. Broader in scope requirements are not part of the authorized program and EPA can not enforce them.

H. Who Handles Permits After This Authorization Takes Effect?

The State of New Mexico will issue permits for all the provisions for which it is authorized and will administer the permits it issues. The EPA will continue to administer any RCRA hazardous waste permits or portions of permits which we issued prior to the effective date of this authorization. We will not issue any more permits or new portions of permits for the provisions listed in that Table in this document after the effective date of this authorization. The EPA will continue to implement and issue permits for HSWA requirements for which New Mexico is not yet authorized.

I. Why Wasn't There a Proposed Rule Before Today's Action?

The EPA did not publish a proposal before today's rule because EPA believes the revisions are not controversial and expects no adverse comments. The EPA is providing an opportunity for public comment now. In addition to this rule, in the proposed rules section of today's **Federal Register** we are publishing a separate document that proposes to authorize the State changes.

J. Where Do I Send My Comments and When Are They Due?

You should send written comments to Alima Patterson, Regional Authorization Coordinator, Grants and Authorization Section (6PD–G), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–8533. Please refer to Docket Number NM–00–1. We must receive your comments by September 10, 2001. You may not have an opportunity to comment again. If you want to comment on this action, you must do so at this time.

K. What Happens if EPA Receives Comments Opposing This Action?

If EPA receives comments that oppose this authorization, EPA may withdraw this rule (see 40 CFR 271.21(b)(3)(c)(iii) by publishing a document in the **Federal Register** before the rule becomes effective or publish a document containing a response to comments and either affirms this immediate final decision or reverses the decision.

L. When Will This Approval Take Effect?

Unless EPA receives comments opposing this action, this final authorization approval will become effective without further notice on October 9, 2001.

M. Where Can I Review The State's Application?

You can review and copy the State of New Mexico's application from 8:30 a.m. to 4 p.m. Monday through Friday at the following addresses: New Mexico Environment Department, 2044 Galisteo, Santa Fe, New Mexico 87505, phone (505) 827–1561 and EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–8533. For further information contact Alima Patterson, Regional Authorization Coordinator, Grants and Authorization Section (6PD–G), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–8533.

N. Does Today's Action Affect Indian Country in New Mexico?

New Mexico is not authorized to carry out its Hazardous Waste Program in Indian Country within the State. This authority remains with EPA. Therefore, this action has no effect on Indian Country.

O. What Is Codification?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the CFR. The EPA does this by referencing the authorized State rules in 40 CFR part 272. The EPA reserves the amendment of 40 CFR part 272, subpart GG for this codification of New Mexico's program changes until a later date.

Administrative Requirements

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. This action authorizes State requirement for the purpose of RCRA 3006 and impose no additional requirements beyond those imposed by State law. Accordingly, I certify that this action 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 action authorizes 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 Mandates Reform

Act of 1995 (Public Law 104–4). This action will not have substantial direct effects 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 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks.

Under RCRA 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. 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. The EPA has compiled with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney Generals' Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under 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. The EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representative, and the Comptroller General of the United States prior to publication 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).

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indians—lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This document is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: May 18, 2001.

Jerry Clifford,

Acting Regional Administrator, Region 6.

[FR Doc. 01–19601 Filed 8–9–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1–% annual chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the FIRM is available for inspection as indicated in the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: FEMA makes final determinations listed below of BFEs and modified BFEs for each community listed. The proposed BFEs and proposed modified BFEs were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed BFEs and proposed modified BFEs were also published in the **Federal Register**.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Acting Administrator, Federal Insurance and Mitigation Administration certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended to read as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD).
ARIZONA	
Maricopa County and Incorporated Areas (FEMA Docket No. 7274)	
Mockingbird Wash:	
Just upstream of U.S. Highway 60/89	*1,994
Approximately 3,610 feet upstream of U.S. Highway 60/89	*2,070
Approximately 10,450 feet upstream of U.S. Highway 60/89	*2,256
Bullard Wash:	
Approximately 2,200 feet downstream of Verde Lane	*1,004
Approximately 300 feet upstream of Indian School Road	*1,024
Arrow Wash:	
Just upstream of confluence with Ashbrook Wash	*1,631
Approximately 170 feet upstream of Cavern Drive	*1,808
Ashbrook Wash:	
Approximately 700 feet downstream of El Pueblo Boulevard	*1,509
Approximately 3,000 feet upstream of Golden Eagle Boulevard	*1,988
Balboa Wash:	
Just upstream of confluence with Ashbrook Wash	*1,557
Just downstream of confluence with Hesperus Wash	*1,724
Caliente Wash:	
Approximately 340 feet downstream of El Pueblo Boulevard	*1,530
Approximately 110 feet upstream of McDowell Mountain Road	*1,660
Cereus Wash:	
Approximately 800 feet downstream of Shea Boulevard	*1,527
Approximately 400 feet upstream of Fountain Hills Boulevard	*1,763
Chukar Wash:	
Just upstream of confluence with Cereus Wash	*1,640
Approximately 1,340 feet upstream of Cereus Wash	*1,671
Colony Wash:	
Approximately 1,900 feet downstream of Panaorama Drive	*1,519
Just downstream of Sycamore Drive	*1,697
Cyprus Point Wash:	
Cyprus Point Wash:	
Approximately 900 feet downstream of Saguaro Boulevard	*1,504
Approximately 950 feet upstream of DeMaret Drive Emerald Wash:	*1,581
Emerald Wash:	
Approximately 500 feet downstream of Saguaro Boulevard	*1,508
Approximately 700 feet upstream of Fountain Hills Boulevard	*1,708
Escalante Wash:	
Approximately 220 feet downstream of Escalante Drive	*1,516
Approximately 60 feet upstream of McDowell Mountain Road	*1,554
Fountain Channel:	
Just upstream of confluence with Colony Wash	*1,561
Approximately 1,450 feet upstream of El Lago Drive	*1,587
Greystone Wash:	
Just upstream of Sycamore Drive	*1,702
Approximately 1,650 feet upstream of Sycamore Drive	*1,764
Hesperus Wash:	
Just upstream of confluence with Balboa Wash	*1,724
Approximately 4,000 feet upstream of Richwood Avenue	*1,914
Jacklin Wash:	
Approximately 300 feet downstream of Indian Wells Drive	*1,498
Approximately 3,420 feet upstream of Jacklin Drive	*1,614
Kingstree Wash:	
Just upstream of confluence with Jacklin Wash	*1,522
Approximately 1,550 feet upstream of Inca Avenue	*1,625
Laser Drain:	
Just upstream of confluence with Cereus Wash	*1,545
Approximately 200 feet upstream of Firebrick Drive	*1,561
Legend Wash:	
Just upstream of confluence with Ashbrook Wash	*1,587
Just downstream of confluence with Tulip Wash	*1,677
Logan Wash:	
Just upstream of confluence with Cereus Wash	*1,618
Approximately 3,330 feet upstream of Cereus Wash	*1,687
Malta Drain:	
Just upstream of confluence with Emerald Wash	*1,510
Approximately 1,970 feet upstream of Quinto Drive	*1,616
Mangrum Wash:	
Just upstream of confluence with Jacklin Wash	*1,537
Approximately 1,100 feet upstream of Jacklin Wash	*1,568
North Colony Wash:	
Just upstream of confluence with Colony Wash	*1,601
Approximately 500 feet upstream of Thistle Drive	*1,747
Oxford Wash:	
Just upstream of confluence with Balboa Wash	*1,610
Approximately 400 feet upstream of Glenbrook Boulevard	*1,719
Powder Wash:	
Approximately 480 feet downstream of Leo Drive	*1,572
Approximately 960 feet upstream of Powderhorn Drive	*1,677
Sunburst Wash:	
Just upstream of confluence with Colony Wash	*1,697
Approximately 690 feet upstream of Sycamore Drive	*1,733
Sycamore Wash:	
Just upstream of Sycamore Drive	*1,702
Approximately 2,100 feet upstream of Sycamore Drive	*1,745
Tulip Wash:	
Just upstream of confluence with Legend Wash	*1,677
Approximately 540 feet upstream of Glenbrook Boulevard	*1,719
Amir Wash:	
Approximately 1,500 feet upstream of U.S. Highway 89/Tegner Street	*2,112
At Vulture Mines Road	*2,234
Approximately 2,900 feet upstream of Vulture Mines Road	*2,264
Blue Tank Wash:	
Just upstream of Jack Burden Road	*2,076
Approximately 4,450 feet upstream of Jack Burden Road	*2,176
Calamity Wash:	
Approximately 150 feet downstream of Wickenburg Way	*2,022
Approximately 10,900 feet upstream of Wickenburg Way	*2,332
Cemetery Wash:	
Approximately 800 feet downstream of AT&SF Railroad	*2,021
Just upstream of AT&SF Railroad	*2,036
Approximately 1,700 feet upstream of Kellis Road	*2,162
Approximately 4,900 feet upstream of Vulture Peak Road	*2,532

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD).
Cemetery Wash Tributary R1:	
Just upstream of confluence with Cemetery Wash	*2,249
Approximately 12,570 feet upstream of confluence with Cemetery Wash	*2,501
Cemetery Wash Tributary R2:	
Just upstream of confluence with Cemetery Wash	*2,294
Approximately 8,100 feet upstream of Vulture Peak Road	*2,525
Cemetery Wash Tributary R3:	
Just upstream of confluence with Cemetery Wash	*2,446
Approximately 1,000 feet upstream of Vulture Peak Road	*2,525
Deadman Wash:	
Approximately 2,000 feet upstream of confluence with New River	*1,490
Approximately 14,630 feet upstream of Black Canyon Highway	*1,894
Deadman Wash—Stream No. 4:	
Just upstream of confluence with Deadman Wash	*1,736
Just downstream of 29th Avenue	*1,786
Deadman Wash—Stream No. 7	
At confluence with Deadman Wash	*1,733
Approximately 5,150 feet upstream of confluence with Deadman Wash	*1,782
Deadman Wash—Stream No. 12:	
Approximately 3,700 feet downstream of Carefree Highway	*1,572
Approximately 3,450 feet upstream of Carefree Highway	*1,614
Flying ''E'' Wash:	
At confluence with Sols Wash	*2,135
Approximately 1,000 feet downstream of Whipple Street (U.S. Highway 60)	*2,276
Approximately 2,400 feet upstream of Whipple Street (U.S. Highway 60)	*2,317
Approximately 9,850 feet upstream of confluence with Holly Wash	*2,522
Hartman Wash:	
At confluence with Sols Wash	*2,186
Approximately 18,000 feet upstream of AT&SF Railroad	*2,438
Approximately 20,940 feet upstream of Old Highway 60	*2,758
Unnamed Tributary to Hartman Wash:	
Just upstream of confluence with Hartman Wash	*2,592
Approximately 1,630 feet upstream of confluence with Hartman Wash	*2,603
Holly Wash:	
At confluence with Flying ''E'' Wash	*2,372
Approximately 9,350 feet upstream of confluence with Flying ''E'' Wash	*2,499

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD).
Iona Wash:	
Approximately 1,930 feet downstream of Deer Valley Road	*1,461
At Lone Mountain Road	*1,697
Approximately 8,450 feet upstream of Black Mountain Road	*1,919
Little San Domingo Wash:	
Approximately 700 feet upstream of confluence with Hassayampa River	*1,787
Approximately 4,450 feet upstream of Morristown New River Highway	*2,062
Monarch Wash:	
At U.S. Highway 60/89	*1,925
Approximately 20,300 feet upstream of U.S. Highway 60/89	*2,368
Ox Wash:	
Approximately 800 feet downstream of AT&SF Railroad	*1,830
Approximately 7,200 feet upstream of U.S. Highway 60/89	*1,983
Powder House Wash:	
At Jack Burden Road	*2,050
Approximately 5,950 feet upstream of Jack Burden Road	*2,173
Approximately 8,750 feet upstream of El Recreo Drive	*2,283
Powder House Wash Tributary #1:	
Just upstream of confluence with Powder House Wash	*2,208
Approximately 1,760 feet upstream of confluence with Powder House Wash	*2,262
Powder House Wash Tributary #2:	
Just upstream of confluence with Powder House Wash	*2,242
Approximately 1,350 feet upstream of confluence with Powder House Wash	*2,280
Rio Verde North—Wash A:	
Approximately 3,500 feet downstream of Forest Road	*1,516
Approximately 9,400 feet upstream of Forest Road	*1,800
Rio Verde North—Wash A South:	
Approximately 300 feet downstream of Forest Road	*1,583
Approximately 4,450 feet upstream of Forest Road	*1,681
Rio Verde North—Wash F:	
Approximately 2,060 feet downstream of Forest Road	*1,527
Approximately 3,020 feet upstream of Forest Road	*1,662
Rio Verde North—Wash I:	
Approximately 980 feet downstream of Forest Road	*1,530
Approximately 2,320 feet upstream of Forest Road	*1,651
San Domingo Wash:	
Just upstream of U.S. Highway 60/89	*1,864
Approximately 12,060 feet upstream of U.S. Highway 60/89	*2,022

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD).
Sols Wash Tributary AH2:	
At confluence with Sols Wash	*2,382
Approximately 9,400 feet upstream of confluence with Sols Wash	*2,426
Sols Wash Tributary AH3:	
At confluence with Sols Wash	*2,324
Approximately 6,550 feet upstream of U.S. Highway 24	*2,635
Unnamed Tributary to Sols Wash Tributary AH3:	
At confluence with Sols Wash Tributary AH3	*2,380
Approximately 10,900 feet upstream of confluence with Sols Wash Tributary AH3	*2,503
Sols Wash Tributary AH4:	
At confluence with Sols Wash	*2,315
Approximately 8,120 feet upstream of confluence with Sols Wash	*2,437
Sols Wash Tributary AH5:	
At confluence with Sols Wash	*2,260
Approximately 2,000 feet upstream of Old Highway 60	*2,576
Sunny Cove Wash:	
At confluence with Sunset Wash	*2,076
Just downstream of Flood Control Dam	*2,108
Sunny Cove Wash (Upper Reach):	
At Flood Control Dam	*2,155
Approximately 200 feet upstream of Steinway Drive	*2,330
Sunset Wash:	
At confluence with Hassayampa River	*2,032
Approximately 2,650 feet upstream of Jackson Street	*2,108
Turtle Back Wash	
At confluence with Hassayampa River	*1,990
Approximately 10,300 feet upstream of AT&SF Railroad	*2,185
Twin Peaks Wash:	
Approximately 520 feet upstream of confluence with Yucca Flat Wash	*2,416
Approximately 11,500 feet upstream of confluence with Yucca Flat Wash	*2,553
Wash AG:	
Approximately 900 feet downstream of AT&SF Railroad	*2,028
Approximately 4,300 feet upstream of AT&SF Railroad	*2,120
Wash E–2:	
Approximately 870 feet upstream of confluence with Mockingbird Wash	*2,055
Approximately 2,120 feet upstream of confluence with Mockingbird Wash	*2,082
Wash F:	
Approximately 400 feet upstream of U.S. Highway 60/89	*1,872
Approximately 5,100 feet upstream of U.S. Highway 60/89	*2,028
Wash F–2:	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD).
At confluence with Wash F	*1,872
Approximately 2,250 feet upstream of confluence with Wash F	*1,953
Wash G:	
Just upstream of U.S. Highway 60/89	*1,895
Approximately 5,340 feet upstream of U.S. Highway 60/89	*2,022
Wash H:	
Just upstream of U.S. Highway 60/89	*1,898
Approximately 9,250 feet upstream of U.S. Highway 60/89	*2,052
Wash I:	
Just upstream of U.S. Highway 60/89	*1,934
Approximately 6,380 feet upstream of U.S. Highway 60/89	*2,071
Wash K:	
Approximately 900 feet downstream of U.S. Highway 60/89	*1,944
Approximately 19,650 feet upstream of U.S. Highway 60/89	*2,394
Wash K–1:	
Just upstream of confluence with Wash K	*2,292
Approximately 4,400 feet upstream of confluence with Wash K	*2,396
Wash L:	
Just upstream of Palm Lake Spillway	*1,955
Approximately 6,500 feet upstream of U.S. Highway 60/89	*2,152
Wash O:	
Approximately 700 feet downstream of U.S. Highway 60/89	*1,997
Approximately 7,000 feet upstream of U.S. Highway 60/89	*2,189
Wash P:	
Approximately 420 feet downstream of Jack Burden Road	*2,089
Approximately 1,430 feet upstream of Jack Burden Road	*2,131
Wash Q:	
Just downstream of AT&SF Railroad	*2,010
Approximately 5,500 feet upstream of AT&SF Railroad	*2,180
Wash S–2:	
Approximately 1,850 feet upstream of confluence with Little San Domingo Wash	*1,844
Approximately 2,450 feet upstream of confluence with Little San Domingo Wash	*1,854
Yucca Flat Wash:	
At confluence with Upper Flying ''E'' Wash	*2,310
At confluence with Twin Peaks Wash	*2,416
Approximately 6,550 feet upstream of confluence with Twin Peaks Wash (just downstream of Yucca Tank)	*2,497
White Tanks Wash:	
Approximately 2,000 feet upstream of Buckeye Flood Retarding Structure	*1,081
Approximately 350 feet downstream of Sun Valley Parkway	*1,389
White Tanks Wash Tributary No. 1:	
Just upstream of White Tanks Wash	*1,159
Approximately 300 feet downstream of Sun Valley Parkway	*1,336
Skunk Tank Wash:	
At confluence with Skunk Creek	*1,760
At Rockaway Hills Road Valley	*1,929
Valley Wash:	
Approximately 750 feet upstream of confluence with Skunk Tank Wash	*1,794
Just downstream of 11th Avenue	*1,800
Queen Creek:	
Just upstream of Hawes Road	*1,379
Just downstream of Southern Pacific Railroad	*1,441

Maps are available for inspection at the Flood Control District of Maricopa County, 2801 West Durango Street, Phoenix, Arizona.

Maps are available for inspection at the Town of Buckeye Town Hall, 100 North Apache Street, Buckeye, Arizona.

Maps are available for inspection at the Town of Fountain Hills Town Hall, 16836 East Palisades Boulevard, Fountain Hills, Arizona.

Maps are available for inspection at the City of Goodyear City Hall, 119 North Litchfield Road, Goodyear, Arizona.

Maps are available for inspection at the City of Peoria City Hall, 8401 West Monroe Street, Peoria, Arizona.

Maps are available for inspection at the City of Phoenix Street Transportation Department, 200 West Washington Street, Fifth Floor, Phoenix, Arizona.

Maps are available for inspection at the Town of Queen Creek Town Hall, 22350 South Ellsworth Road, Queen Creek, Arizona.

Maps are available for inspection at the City of Surprise, Community Development Services, 12425 West Bell Road, Suite D–100, Surprise, Arizona.

Maps are available for inspection at the Town of Wickenburg Town Hall, 155 North Tegner Street, Wickenburg, Arizona.

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD).
ARKANSAS	
Little Rock (City), Pulaski County (FEMA Docket No. B–7410)	
Fourche Creek:	
At confluence with Arkansas River	*249
Just downstream of Frazier Pike	*254
Just downstream of State Highway 67/70 (Northbound University Avenue)	*258
Fourche Bayou:	
Approximately 1,000 feet downstream of Frazier Pike	*240
Grassy Flat Creek:	
At confluence with Rock Creek	*330
Just downstream of Reservoir Road	*367
Approximately 300 feet upstream of Rocky Valley Drive	*481
Little Maumelle River:	
Approximately 1.2 miles upstream of confluence with Arkansas River	*263
Rock Creek:	
At confluence with Fourche Creek	*258
Approximately 200 feet upstream of Barrow Road	*333

Maps are available for inspection at the City of Little Rock Department of Public Works, 701 West Markham Street, Little Rock, Arkansas.

Pulaski County, (Unincorporated Areas) (FEMA Docket No. B 7410)

Fourche Creek:	
Approximately 200 feet downstream of Airport Road	*253
Just upstream of Mabelvale Pike	*258
Little Fourche Creek:	
Approximately 2,700 feet upstream of West 65th Stream	*257
Just downstream of Geyer Springs Road	*267
Rock Creek:	
Just upstream of Kanis Road	*467
Approximately 1,300 feet upstream of Kanis Road	*493
Rock Creek Tributary A:	
At confluence with Rock Creek	*479
Approximately 2,600 feet upstream of Chanel Valley Parkway	*538

Maps are available for inspection at the Pulaski County Planning Department, 501 West Markham Street, Little Rock, Arkansas.

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD).
CALIFORNIA	
San Mateo (City), San Mateo County (FEMA Docket No. 7282)	
San Mateo Creek:	
Approximately 800 feet downstream of J. Hart Clinton Drive	*7.0
Approximately 55 feet upstream of El Cerrito Road	*73
San Mateo Creek Overflow:	
Approximately 1,600 feet downstream of divergence from San Mateo Creek	*7.0
At divergence from San Mateo Creek	*12.0
Maps are available for inspection at the City of San Mateo City Hall, 330 West 20th Avenue, San Mateo, California.	
KANSAS	
Douglas County and Incorporated Areas (FEMA Docket No. B–7401)	
Atchinson, Topeka, & Santa Fe Tributary:	
Approximately 300 feet upstream of County Road 1550 North	+821
Approximately 1,300 feet upstream of Atchinson, Topeka, & Santa Fe Railroad	+827
Just upstream of 13th Street	+831
Approximately 600 feet upstream of Learnard Street	+855
Baldwin Creek:	
Approximately 2,500 feet upstream of County Road 900 East	+922
Just downstream of County Road 1800 North	+840
Just upstream of County Road 1000 East	+870
Baldwin Creek Tributary:	
Approximately 300 feet downstream of County Road 975 East	+885
Approximately 4,00 feet upstream of County Road 975 East	+931
Belle Haven Tributary:	
Approximately 300 feet downstream of West 29th Terrace	+826
Approximately 500 feet upstream of West 29th Terrace	+829
Approximately 350 upstream of West 27th Terrace	+836
Broken Arrow Tributary:	
Approximately 1,850 feet downstream of Private Drive	+825
Approximately 1,300 feet upstream of Private Drive	+847
Brook Street Tributary:	
Just downstream of 13th Street	+827
Approximately 1,100 feet upstream of 15th Street	+843
Coal Creek:	
Approximately 400 downstream of County Road 1100 North	+817
Just downstream of County Road 700 North	+860
Approximately 1,900 feet upstream of County Road 600 North	+884
Coon Creek:	
Approximately 200 feet downstream of West Woodson Avenue	+855
Country Club—Hope Plaza Tributary:	
Just downstream of Michigan Street	+830
Approximately 850 feet upstream of Complex Road	+834
Deerfield Tributary:	
Just upstream of Kasold Drive	+856
Approximately 1,100 feet upstream of Kansas Turnpike	+857
Just downstream of Princeton Boulevard	+883
Eudora East Tributary:	
Approximately 650 feet upstream of Atchinson, Topeka, & Santa Fe Railroad	+810
Approximately 1,100 feet upstream of Private Access Road	+840
Approximately 80 feet upstream of 10th Street	+840
Approximately 1,300 feet upstream of Private Access Road	+841
Approximately 2,800 feet upstream of the Corporate Limit line with the City of Eudora	+864
Eudora Middle Tributary:	
Just downstream of Atchinson, Topeka, & Santa Fe Railroad	+807
Approximately 100 feet upstream of Atchinson, Topeka, & Santa Fe Railroad	+814
Just downstream of 10th Street	+824
Approximately 800 feet upstream of 12th Street	+837
Haskell Tributary:	
Approximately 150 feet upstream of downstream Limit of Detailed Study	+823
Approximately 100 downstream of the upstream Limit of Detailed Study	+834
Hidden Valley Tributary:	
Approximately 3,000 feet upstream of 23rd Street	N/A
Just downstream of County Road 1350 North	+837
Just downstream of 23rd Street	+850
Just upstream of 23rd Street	+851
Approximately 3,00 feet upstream of 23rd Street	+871
Kansas River:	
Just downstream of County Road 2172 East	+807
Approximately 5,500 feet upstream of confluence of Atchinson, Topeka, & Santa Fe Railroad Tributary	+820
Approximately 200 feet downstream of North 2nd Street	+827
Approximately 6,500 feet upstream of the confluence of Baldwin Creek	+837
Approximately 3,500 feet upstream of Eisenhower Memorial Drive	+848
Approximately 300 feet downstream of Douglas County/Shawnee County Line	+861
Kanwaka Tributary:	
Just downstream of Private Drive	+930
Approximately 4,500 feet upstream of Private Drive	+1,000
KLWN Tributary:	
Approximately 2,400 feet downstream of West 31st Street	+833
Just downstream of 31st Street	+843
Approximately 2,250 feet upstream of West 31st Street	+862
Little Wakarusa Creek:	
Approximately 200 feet downstream of County Road 2000 East	+812
Approximately 10,500 feet upstream of County Road 2000 East	+814
Maple Grove Drainage:	
Approximately 2,350 feet downstream of Union Pacific Railroad	+811
Approximately 450 upstream of North 9th Street	+820
Approximately 1,700 feet upstream of West Fork Union Pacific Railroad	+823
Just upstream of County Road 1400 East	+824
Naismith Creek:	
Approximately 2,600 feet upstream of 31st Street	+826
Approximately 1,500 feet downstream of West 27th Street	+830
Approximately 500 feet downstream of West 23rd Street	+848
Just upstream of 21st Street	+865
North Spring Creek:	
Approximately 2,500 feet upstream of County Road 1275 North	+813
Pleasant Grove:	
Approximately 2,000 feet downstream of East Tributary County Road 1100 North	+830
Just downstream of County Road 1400 East	+850
Approximately 500 feet downstream of County Road 1000 North	+878
Pleasant Grove West Tributary:	
Approximately 2,400 feet downstream of County Road 1100 North	+830
Just downstream of County Road 1300 East	+876
Approximately 1,650 feet upstream of County Road 1300 East	+931
Pleasant Valley Tributary:	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD).
Approximately 850 feet downstream of County Road 1300 East	+830
Just upstream of County Road 1100 North	+845
Just downstream of County Road 1200 East	+894
Quail Creek:	
Approximately 2,200 feet upstream of the confluence with Yankee Tank Creek	N/A
Just downstream of Brush Creek Drive	+840
Approximately 350 downstream of Quail Creek Drive	+871
Approximately 1,000 feet upstream of Quail Creek Drive	+880
Tauy Creek East Fork:	
Approximately 4,450 downstream of County Road 150 North	+978
Just downstream of County Road 200 North	+996
Just upstream of County Road 200 North N/A	+997
Approximately 1,900 feet downstream of High Street	+1,003
Just downstream of Highway 56	+1,022
Just upstream of Highway 56	+1,030
Approximately 450 feet upstream of County Road 1700 East	+1,055
Approximately 1,900 feet upstream of County Road 1700 East	+1,069
Tauy Creek East Fork Tributary:	
At the confluence with Tauy Creek East Fork	+988
Approximately 750 feet downstream of 6th Street	+995
Approximately 250 feet upstream of Chapel Street	+1,043
Tauy Creek East Fork Tributary A:	
Approximately 150 feet downstream of 3rd Street	+1,019
Approximately 200 feet upstream of 1st Street	+1,042
Tauy Creek East Fork Tributary B:	
Approximately 1,000 feet downstream of 3rd Street	+1,004
Just downstream of 3rd Street	+1,020
Tauy Creek East Fork Tributary C:	
Approximately 1,250 feet downstream of 3rd Street	+1,007
Approximately 400 feet upstream of High Street	+1,037
Vinland Creek:	
Approximately 3,500 feet downstream of County Road 790 North	+838
Just upstream of County Road 700 North	+864
Vinland Creek West Fork:	
Just downstream of County Road 1650 East	+862
Just upstream of County Road 1600 East	+888
Wakarusa River:	
Just downstream of County Road 2172 East	+807
Just upstream of Atchinson, Topeka, & Santa Fe Railroad	+808
Just upstream of County Road 1900 East	+813
Approximately 1,300 feet upstream of County Road 1750 East	+815
Approximately 3,000 feet upstream of U.S. Highway 59	+829
Approximately 3,000 feet upstream of County Road 1150 East	+833
Wakarusa River (left overbank flow):	
Approximately 200 feet downstream of Haskell Avenue	+818
Approximately 1,300 feet upstream of County Road 1750 East	+814
Approximately 200 feet upstream of County Road 1400 East	+823
Washington Creek:	
Just upstream of County Road 1200 East	+836
Approximately 3,800 feet upstream of County Road 1075 North	+846
Just upstream of County Road 650 East	+908
Washington Creek Tributary:	
Approximately 850 feet downstream of County Road 1075 North	+842
Approximately 200 feet downstream of Private Road	+858
Approximately 2,600 feet upstream of County Road 900 North	+878
Yankee Tank Creek:	
Approximately 500 feet downstream of Kasold Drive	+831
Yankee Tank Creek East Branch:	
Approximately 1,650 feet upstream of Kasold Drive	+837
Just downstream of Highway 10	+850
Approximately 400 feet downstream of West 15th Street	+881
Yankee Tank Creek West Branch:	
Approximately 4,700 feet downstream of South Lawrence Trafficway	+834
Approximately 600 feet upstream of South Lawrence Trafficway	+843
Elevation in feet (NAVD 1988).	
Maps are available for inspection at the Douglas County Department of Public Works, 1242 Massachusetts Street, Lawrence Kansas.	
Maps are available for inspection at the City of Lawrence Courthouse Planning Department, 6 East Sixth Street, Lawrence, Kansas.	
Maps are available for inspection at the City of Lecompton City Hall, 333 Elmore Street, Lawrence, Kansas.	
Maps are available for inspection at the City of Eudora City Hall, 4 East Seventh Street, Eudora, Kansas.	
Maps are available for inspection at the City of Baldwin City Hall, 803 Eighth Street, Baldwin, Kansas.	
MISSOURI	
Waynesville (City), Pulaski County (FEMA Docket No. B–7404)	
Roubidoux Creek:	
Approximately 5,600 feet downstream of Historical Route 66	773*
Approximately 2,600 feet upstream of Historical Route 66	784*
Just downstream of Interstate Highway 44	786*
Mitchell Creek:	
At confluence with Roubidoux Creek	782*
Northern Side of Interstate 44	850*
Pearson Hollow:	
At confluence with Mitchell Creek	827*
Approximately 700 feet upstream of New Road	901*
Maps are available for inspection at City Hall, 201 North Elm Street, Waynesville, Missouri.	
NEBRASKA	
Lancaster County and Incorporated Areas FEMA Docket No. B-7404)	
Middle Creek:	
Approximately 1,400 feet downstream of Holdrege Street	None
Approximately 200 feet downstream of Holdrege Street	None
Salt Creek:	
Approximately 350 feet upstream of North 112th Street	*1,120
Approximately 5,800 feet upstream of Rokeby Road	*1,192
At Satillo Road	*1,196
Stevens Creek:	
Approximately 1,000 feet downstream of Van Dorn Street	*1,206
Maps for the City of Lincoln and the unincorporated areas of Lancaster County are available for inspection at the Building and Safety Department, 555 South 10th Street, Lincoln, Nebraska 68508.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD).
OKLAHOMA	
Creek County, (Unincorporated Areas) (FEMA Docket No. B-7407)	
Polecat Creek:	
Just upstream of 33rd West Avenue	*663
Approximately 4,000 feet upstream of Burlington Northern Railroad	*667
Rock Creek:	
At confluence with Polecat Creek	*666
Approximately 1,100 feet downstream of Lake Sahoma Den Outlet	*694
Nickel Creek:	
Just upstream of 33rd West Avenue	*636
Approximately 3,500 feet upstream of 66th Street	*712
Maps are available for inspection at the County Courthouse, 317 East Lee, Sapulpa, Oklahoma.	
Gore (Town), Sequoyah County (FEMA Docket No. B–7407)	
Arkansas River:	
Western corporate limits just south of the Union Pacific Railroad	*481
Maps are available for inspection at the Town Municipal Building, 8th and South Main Streets, Sallisaw, Oklahoma.	
Muskogee County, Unincorporated Areas (FEMA Docket No. B–7407)	
Arkansas River (Lower Reach):	
Just upstream of Interstate Highway 40	*476
Approximately 4,000 feet downstream of U.S. Highway 64	*479
Just north of U.S. Highway 64	*480
Approximately 3,500 feet downstream of Webbers Falls Lock and Dam	*483
Dirty Creek:	
Approximately 700 feet downstream of Route 100	*485
Approximately 500 feet upstream from intersection of Muskogee Turnpike and Interstate 40	*487
Maps are available for inspection at the Muskogee County Courthouse, 1300 South Cherokee, Muskogee, Oklahoma.	
Sapulpa (City), Creek County (FEMA Docket No. B–7407)	
Nickel Creek:	
Approximately 3,000 feet downstream of Land Road	*663
Approximately 300 feet upstream of Tulsa Sapulpa Union Railroad	*695
Polecat Creek:	
Approximately 4,000 feet downstream of Hilton Road	*649
Approximately 8,000 feet upstream of Hilton Road	*654
Just upstream of Route 117	*662
Just downstream of alternate Route 75	*667
Rock Creek:	
Approximately 3,300 feet upstream of the confluence with Polecat Creek	*667
Just downstream of Old Highway 66	*678
Just downstream of Turner Turnpike	*684
Maps are available for inspection at 425 East Dewey, Sapulpa, Oklahoma.	
Sequoyah County, (Unincorporated Areas) (FEMA Docket No. B–7407)	
Arkansas River:	
Just above Highway 40	*476
Approximately 4,200 feet upstream of Route 100—U.S. Highway 64	*481
Maps are available for inspection at the Sequoyah County Courthouse, 120 East Chickasaw, Sallisaw, Oklahoma.	
Webbers Falls (Town), Muskogee County (FEMA Docket No. B–7407)	
Arkansas River (Lower Reach):	
Approximately 4,000 feet downstream of U.S. Highway 64	*479
Just north of U.S. Highway 64	*480
Maps are available for inspection at the Webbers Falls City Hall, 100 River Street, Webbers Falls, Oklahoma.	
OREGON	
Portland (City), Multnomah, Clackamas and Washington Counties (FEMA Docket No. B–7413)	
Fanno Creek:	
Approximately 2,350 feet downstream of Southwest 59th Avenue	*243
Approximately 50 feet upstream of Southwest 45th Avenue	*281
Maps are available for inspection at City Hall, 1221 Southwest Fourth Avenue, Portland, Oregon.	
SOUTH DAKOTA	
Day County and Incorporated Areas (FEMA Docket No. B–7410)	
Bitter Lake:	
Along entire shoreline	*1,810
Blue Dog Lake:	
Along entire shoreline	*1,810
Foldager Slough:	
Along entire shoreline	*1,810
Goose Lake:	
Along entire shoreline	*1,810
Hillebrands Lake:	
Along entire shoreline	*1,810
Little Rush Lake:	
Along entire shoreline	*1,810
Minnewasta Lake:	
Along entire shoreline	*1,810
Rush Lake:	
Along entire shoreline	*1,810
Solomon Slough:	
Along entire shoreline	*1,810
South Waubay Lake:	
Along entire shoreline	*1,810
Spring Lake:	
Along entire shoreline	*1,810
Swan Pond:	
Along entire shoreline	*1,810
Waubay Lake:	
Along entire shoreline	*1,810
Maps for the Town of Grenville and the unincorporated areas of Day County are available for inspection at 711 West First Street, Webster, South Dakota.	
Maps for the City of Waubay are available for inspection at City Hall, 415 Main Street, Waubay, South Dakota.	
Maps for the City of Webster are available for inspection at City Hall, 800 Main Street, Webster, South Dakota.	
TEXAS	
Dallas County and Incorporated Areas (FEMA Docket No. 7318)	
Trinity River:	
Approximately 2,500 feet downstream of Dowdy Ferry Road	*394
At Loop 12	*403
At confluence of West Fork and Elm Fork Trinity River	*423
West Fork Trinity River:	
At confluence with Elm Fork Trinity River	*423
Just downstream of Belt Line Road	*440
Approximately 11,000 feet upstream of State Route 360	*465
Elm Fork Trinity River:	
At confluence with West Fork Trinity River	*423
Just downstream of Valley View Lane	*435
Approximately 13,000 feet upstream of the confluence of Indian Creek	*454
Tenmile Creek:	
Just upstream of abandoned Watermill Road	*440

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD).
Approximately 300 feet downstream of Interstate Highway 35	*529
At Westmoreland Road	*584
Approximately 300 feet downstream of Cockrell Hill Road	*599
Long Branch of Muddy Creek:	
Approximately 1,200 feet upstream of Gulf, Colorado, and Santa Fe Railroad	*520
Approximately 1,200 feet downstream of Dewitt Road	*530
Indian Creek:	
Approximately 800 feet downstream of Paige Road	*532
Approximately 2,300 feet upstream of Paige Road	*542
Cottonwood Creek of Grand Prairie:	
At confluence with Mountain Creek of Grand Prairie Mountain Creek Lake	*458
Approximately 2,000 feet downstream of SE 14th Street (Fish Creek Road)	*459
Approximately 150 feet downstream of SE 8th Street	*470
Bear Creek:	
Approximately 2,850 feet downstream of County Road	*521
Maps are available for inspection at City Hall, 105 Cockrell Hill Road, Ovilla, Texas.	
Maps are available for inspection at the County Administration Building, 411 Elm, 4th Floor, Dallas, Texas.	
Maps are available for inspection at City Hall, Public Works Department, 1945 East Jackson, Carrollton, Texas.	
Maps are available for inspection at City Hall, Engineering Department, 255 Parkway Boulevard, Coppell, Texas.	
Maps are available for inspection at Oak Cliff Municipal Center, Floodplain Management and Erosion Control, 320 E. Jefferson, Room 321, Dallas (Oak Cliff), Texas 75201.	
Maps are available for inspection at City Hall, Development Services, 211 East Pleasant Run Road, DeSoto, Texas.	
Maps are available for inspection at City Hall, Public Works, 203 East Wheatland Road, Duncanville, Texas.	
Maps are available for inspection at City Hall, Engineering Department, 13000 William Dodson Parkway, Farmers Branch, Texas.	
Maps are available for inspection at the Engineering Department, 206 West Church, Grande Prairie, Texas.	
Maps are available for inspection at the Codes Department, 205 West Hickman, Hutchins, Texas.	
Maps are available for inspection at the Civic Center, Public Works, 825 West Irving Boulevard, Irving, Texas.	
Maps are available for inspection at Public Works Department, 700 East Main, Lancaster, Texas.	
Maps are available for inspection at City Hall, Community Development, 5560 Highway 78, Sachse, Texas.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD).
Denton County and Incorporated Areas (FEMA Docket No. 7318)	
Denton Creek (Below Grapevine Lake):	
At confluence with Elm Fork of Trinity River	*445
Approximately 6,400 feet upstream of confluence with Elm Fork of Trinity River	*445
Approximately 26,000 feet upstream of confluence with Elm Fork of Trinity River	*455
Dudley Branch:	
Approximately 50 feet upstream from confluence with Elm Fork of Trinity River	*451
Approximately 425 feet upstream of the Missouri-Kansas-Texas Railroad	*452
Approximately 750 feet downstream from Eisenhower Street	*453
At Eisenhower Street	*457
Elm Fork Trinity River West Split Flow Area:	
At confluence with Elm Fork Trinity River	*453
At divergence from Elm Fork Trinity River	*457
Elm Fork Trinity River (Below Lewisville Lake):	
Approximately 1,050 feet downstream from confluence with Timber Creek	*449
Approximately 300 feet downstream from Interstate 35	*450
At State Route 121	*462
At Atchinson, Topeka and Santa Fe Railway	*462
Indian Creek (At Grapevine Lake):	
At confluence with Elm Fork Trinity River	*452
Approximately 7,000 feet upstream of confluence with Elm Fork Trinity River	*452
Approximately 700 feet upstream of West Hebron Parkway	*462
Lake Lewisville Spillway:	
At confluence with Elm Fork Trinity River	*462
Approximately 2,400 feet upstream of confluence with Elm Fork Trinity River	*462
Approximately 5,500 feet upstream of State Route 12	*482
Timber Creek:	
At confluence with Elm Fork Trinity River	*449
Approximately 900 feet upstream of Pound Grove Road	*453
Approximately 2,500 feet upstream of Interstate Route 35E	*463
Maps are available for inspection at the Planning Department, 306 North Loop 288, Denton, Texas.	
Maps are available for inspection at the Engineering Department, 1197 West Main, 2nd Floor, Lewisville, Texas.	
Fort Bend County, (Unincorporated Areas) (FEMA Docket No. B–7413)	
San Bernard River:	
Approximately 2 miles downstream of FM 442	*64
Approximately 2.25 miles upstream of the confluence with Snake Creek	*79
Maps are available for inspection at Fort Bend County Engineer's Office, 1124 Blume Road, Rosenberg, Texas.	
Gillespie County and (Incorporated Areas) (FEMA Docket No. 7310)	
Baron's Creek:	
Approximately 4,000 feet upstream of U.S. Highway 290	*1,611
Approximately 4,200 feet upstream of U.S. Highway 290	*1,612
Downstream of East Main Street	*1,650
Stream FB–1:	
At confluence with Baron's Creek	*1,641
Approximately 1,500 feet upstream of confluence with Baron's Creek	*1,647
Approximately 1,950 feet upstream of Lower Crabapple Road	*1,780
Town Creek:	
Approximately 60 feet downstream of Edison Street	*1,710
Approximately 200 feet upstream of Schubert Road	*1,711
Approximately 2,150 feet upstream of Morse Street	*1,751
Pedernales River:	
At Gillespie/Blanco County Line	*1,398
Approximately 3,100 feet upstream of Cellemar Lane	*1,473
Salt Branch:	
At confluence with Pedernales River	*1,442

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD).
Approximately 4,300 feet upstream of Highway 290	*1,473
Stream SB–1:	
At confluence with Salt Branch	*1,444
Approximately 5,800 feet upstream of Highway 290	*1,465
Split Flow # 1:	
At convergence with Pedernales River	*1,422
At Divergence from Pedernales River	*1,435
Maps are available for inspection at the City of Fredericksburg Development Services Division, 126 W. Main Street, Fredericksburg, Texas.	
Maps are available for inspection at Gillespie County Floodplain Department, 101 West Main, Unit #9, Fredericksburg, Texas.	
Vernon (City), Wilbarger County (FEMA Docket No. B–7407)	
Pease River Tributary 1:	
Approximately 100 feet downstream of Harrison Street	+1,206
Approximately 2,400 feet upstream of Brewer Street	+1,231
Pease River Tributary 2:	
Approximately 100 feet downstream of the BN&SF Railroad	+1,200
Just upstream of U.S. Highway 287	+1,219
+ Elevation in NAVD of 1988	
Maps are available for inspection at the City of Vernon City Hall, 1725 Wilbarger Street, Vernon, Texas.	
Wharton County, Unincorporated Areas (FEMA Docket No. B–7413)	
East Fork Jones Creek:	
Approximately 800 feet upstream of FM 960	*115
Approximately 7,000 feet upstream of River Valley Road	*122
East Mustang Creek:	
Approximately 1,800 feet downstream of confluence of Stage Stand Creek	*72
Approximately 1,750 feet downstream of Stockton Road	*88
San Bernard River:	
Approximately 10,000 feet downstream of FM 442	*64
At confluence of Peach Creek	*79
Maps are available for inspection at the Wharton County Engineer's Office, 1017 North Alabama, Wharton, Texas.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD).
UTAH	
Salt Lake County and Incorporated Areas (FEMA Docket No. B–7404)	
Big Cottonwood Creek:	
At confluence with Jordan River	*4,243
Just upstream of 4500 South Street	*4,265
At 900 West Street	*4,291
Little Cottonwood Creek:	
Approximately 200 feet upstream of confluence with Jordan River	*4,249
Approximately 100 feet downstream of 5900 South Street	*4,347
Mill Creek:	
At confluence with Jordan River	*4,233
Just downstream of State Street	*4,251
Approximately 300 feet downstream of 3300 South Street	*4,263
Maps for the City of Murray are available for inspection at the Office of the City Engineer, 4646 South 500 West, Murray, Utah.	
Maps for the City of South Salt Lake are available for inspection at 220 East Morris Avenue, South Salt Lake, Utah 85115.	
WASHINGTON	
Cowlitz County (Unincorporated Areas) (FEMA Docket No. 7318)	
Cowlitz River:	
At confluence with Columbia River	*18
Approximately 3 miles upstream of the confluence of the Toutle River	*62
Toutle River:	
At confluence with Cowlitz River	*58
Immediately downstream of Burlington Northern Railroad	*58
Arkansas Creek:	
At confluence with Cowlitz River	*48
Approximately 0.3 mile downstream of Delameter Road	*48
Ostrander Creek:	
Just downstream of Burlington Northern Railroad ..	*33
At Ostrander Road	*33
Coweman River (Lower Reach near Kelso):	
Approximately 1.5 miles upstream of confluence with Cowlitz River	*19
Approximately 4.3 miles upstream of confluence with Cowlitz River	*19
Maps are available for inspection at the Planning Department, County Courthouse, 207 4th Avenue North, Kelso, Washington.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD).
Castle Rock (City), Cowlitz County (FEMA Docket No. 7318)	
Cowlitz River:	
Approximately 14,500 feet downstream of State Highway 10	*43
Approximately 2,700 feet upstream of State Highway 10	*53
Maps are available for inspection at City Hall, 141 A Street, SW, Castle Rock, Washington.	
Kelso (City), Cowlitz County (FEMA Docket No. 7318)	
Cowlitz River:	
At confluence with Columbia River	*18
Approximately 4,500 feet upstream of Cowlitz Way	*27
Coweman River:	
At confluence with Cowlitz River	*19
Approximately 1.6 miles upstream of Kelso Drive	*19
Maps are available for inspection at the Mayor and Council Office, Allen Street, Kelso, Washington.	
Longview (City), Cowlitz County (FEMA Docket No. 7318)	
Cowlitz River:	
At State Route 43Z	*19
Approximately 4,500 feet upstream of Cowlitz Way	*27
Maps are available at the Planning and Building Department, 1525 Broadway, Longview, Washington.	

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Robert F. Shea,

Acting Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 01–20075 Filed 8–9–01; 8:45 am]

BILLING CODE 6718–04–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 010607147–1200–02; I.D. 052101A]

RIN 0648–AP26

Pacific Halibut Fisheries; Primary Sablefish Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to provide a regulatory framework for implementing Area 2A Pacific Halibut Catch Sharing Plan (CSP) allocations to the Pacific Coast, limited entry primary sablefish fishery. This final rule allows halibut taken incidentally in the primary longline sablefish fishery to be retained and landed, and provides a framework for the Pacific Fishery Management Council (Council) to recommend halibut catch limits for the sablefish fishery when a halibut quota is available to that fishery. The CSP provides for an incidental halibut retention in the limited entry, primary fixed gear sablefish fishery north of Pt. Chehalis, WA in years when the Area 2A total allocable catch (TAC) of Pacific halibut exceeds 900,000 lb (408.2 metric tons (mt)). The Pacific halibut TAC exceeded that amount for the first time in 2001. This action provides the regulatory framework that carries out the intent of the Council that the limited entry primary sablefish fishery be provided an incidental halibut retention allowance under this condition.

DATES: Effective August 10, 2001.

ADDRESSES: Copies of the Environmental Assessment/Regulatory Impact Review (EA/RIR) for this action are available from Donald McIsaac, Executive Director, Pacific Fishery Management Council (Council), 7700 NE Ambassador Pl., Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Yvonne deReynier, 206–526–6140.

SUPPLEMENTARY INFORMATION: This final rule revises the Pacific Halibut Fisheries regulations at 50 CFR Part 300 to allow halibut taken incidentally in the primary longline sablefish fishery to be retained and landed when there is sufficient halibut in the Area 2A (waters off Washington, Oregon, California) TAC to provide a quota for this fishery. This final rule establishes a framework for the Council to recommend incidental halibut landings limits for the longline sablefish fishery. This final rule is based on recommendations of the Council, under the authority of the Pacific Halibut Act and the Area 2A CSP. NMFS published a proposed rule to implement those recommendations on June 14, 2001 (66 FR 32310). No public comments were received during the comment period ending July 16, 2001.

Pacific halibut fisheries off Washington, Oregon, and California are managed under the Pacific halibut CSP for the International Pacific Halibut Commission (Commission) regulatory Area 2A. Overall harvest levels are set by the Commission at its annual meeting in January of each year. For 2001, the Commission set the Area 2A TAC at 1,140,000 lb (517 mt). NMFS implemented this TAC and the resulting sub-quotas for most Area 2A fisheries (including the sub-quota for this fishery) in a final rule published in the **Federal Register** on March 21, 2001 (66 FR 15801).

The CSP provides for an incidental halibut retention allowance in the limited entry, primary fixed gear sablefish fishery north of Pt. Chehalis, WA in years when the Area 2A TAC is above 900,000 lb (408.2 mt). This provision of the CSP was introduced in 1998, but the Area 2A TAC did not rise above 900,000 lb (408.2 mt) until this year. According to the CSP, the primary sablefish fishery is allocated the amount of halibut from the portion of the Washington sport fishery allocation (36.6 percent of the Area 2A TAC) that is in excess of 214,110 lb (97.1 mt), provided that a minimum of 10,000 lb (4.5 mt) is available to the sablefish fishery. Under the 2001 Area 2A TAC of 1,140,000 lb (517 mt), the primary sablefish fishery allocation for 2001 is 47,946 lb (21.7 mt).

While the CSP provides the formula for calculating the primary sablefish fishery's halibut allocation, it does not specify a regulatory framework for the retention of halibut taken incidentally during the sablefish fishery. Similarly, the CSP specifies a formula for determining the amount of halibut available for incidental retention in the salmon troll fishery without setting a regulatory framework managing per-vessel retention levels. To implement the CSP for the salmon troll fishery, Federal halibut regulations at 50 CFR 300.63(a)(2) state,

> A portion of the commercial [halibut] TAC is allocated as incidental catch in the salmon troll fishery in Area 2A. Each year the landing restrictions necessary to keep the fishery within its allocation will be recommended by the Pacific Fishery Management Council at its spring meetings, and will be published in the **Federal Register** along with the annual salmon management measures.

During its March and April 2001 meetings, the Council crafted a regulatory framework to ensure that a halibut quota would be available for the anticipated August through October primary longline sablefish fishery. The Council has recommended revising the Federal halibut regulations to provide a framework similar to the salmon troll framework that directs the Council to annually recommend halibut retention limits for the primary sablefish fishery at its March and April meetings. Under this framework, the Council will recommend annual halibut landings limits for vessels participating in the primary sablefish fishery, based on the amount of halibut available to the fishery and the expected number of fishery participants. Each year, NMFS will publish the Council's recommended halibut retention limits in the **Federal Register**. This regulatory framework would only be used in years when the Area 2A TAC is above 900,000 lb (408.2 mt).

According to IPHC and Federal regulations, Pacific halibut may not be taken by gear other than longline gear. Only vessels registered for use with sablefish endorsement limited entry permits may participate in the primary fixed gear sablefish fishery specified for halibut retention in the CSP. Halibut may only be taken with longline gear. These vessels must also carry IPHC commercial halibut licenses in order to retain and land halibut. Halibut retention in the primary sablefish fishery will also only be available to vessels operating north of Pt. Chehalis, WA (46°53′18″ N. lat.) There is a directed fishery for halibut south of Pt. Chehalis, which receives a halibut allocation every year, regardless of the size of the TAC.

At its June 2001 meeting, the Council recommended a 2001- halibut retention ratio of 80 lb (36 kg) of halibut per 1,000 lb (454 kg) of sablefish, plus up to two additional halibut per fishing trip. Each vessel would be constrained by season cumulative limits for halibut linked to their tiered sablefish cumulative limits, allowing a vessel to take no more than 2,850 lb (1,293 kg) of halibut for Tier 1 vessels, 1,300 lb (590 kg) of halibut for Tier 2 vessels, and 750 lb (340 kg) of halibut for Tier 3 vessels. This recommendation is consistent with this final rule and is implemented by NMFS for the 2001 primary sablefish season through this action.

NMFS Actions

In addition to implementing the Council's recommendation, , the final rule announces the cumulative landings limits for halibut taken incidentally with longline gear in the limited entry, primary fixed gear fishery for sablefish north of Pt. Chehalis, WA. Because this halibut will be taken by vessels participating in the limited entry groundfish fishery, incidental halibut cumulative landings limits will be announced as an amendment to the Pacific Coast groundfish 2001 annual specifications and management measures, originally published at 66 FR

2338, January 11, 2001, and amended at the 2001 annual specifications and management measures at 66 FR 2338, January 11, 2001, as amended at 66 FR 10211 (February 14, 2001), at 66 FR 18409 (April 9, 2001), at 66 FR 22467 (May 4, 2001), at 66 FR 28676 (May 24, 2001), at 66 FR 35388 (July 5, 2001), and at 66 FR 38162 (July 23, 2001). This action further amends the specifications and management measures to read as follows:

(1) In Section IV, under B. *Limited Entry Fishery*, a new paragraph (2)(b)(i)(A) is added.

IV. NMFS Actions

B. Limited Entry Fishery

* * * * *

(2) Sablefish. * * *

(b) Nontrawl trip and size limits. * * *

(i) Primary season. * * *

(A) *Incidental halibut retention north of Pt. Chehalis, WA (46°53′18≥ N. lat.)* Vessels authorized to participate in the primary sablefish fishery, licensed by the International Pacific Halibut Commission for commercial fishing in Area 2A (waters off Washington, Oregon, California), and fishing with longline gear north of Pt. Chehalis, WA (46°53′18″ N. lat.) may land up to the following cumulative limits: 80 lb (36 kg) of halibut per 1,000 lb (454 kg) of sablefish, plus up to two additional halibut per fishing trip. In addition, the following per vessel, primary season cumulative limits apply: 2,850 lb (1,293 kg) of halibut for Tier 1 vessels, 1,300 lb (590 kg) of halibut for Tier 2 vessels, and 750 lb (340 kg) of halibut for Tier 3 vessels. If a vessel is registered for use with more than one sablefish endorsed limited entry permit, the cumulative halibut limit of the tier associated with the vessel's base permit (indicated on the permit) applies. Halibut limits are in net weight (head-off, gutted); sablefish limits are in round weight.

(B) [Reserved]

* * * * *

Classification

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration when this rule was proposed, that this rule, if adopted as proposed, would not have a significant economic impact on a substantial number of small entities.

Under 5 U.S.C. 553(d)(3), NMFS finds good cause to waive the 30-day delay in effectiveness for this final rule. This rule implements the CSP by allowing longline vessels fishing north of Pt. Chehalis, WA to retain halibut caught incidentally in the primary fixed gear sablefish fishery. The primary sablefish fishery is expected to start on August 15. If this rule is not effective before the start of the primary season, longliners who catch halibut incidental to their sablefish fishing operations will have to discard that halibut.

Halibut and sablefish are frequently found in the same fishing grounds. The primary sablefish fishery is an intensely concentrated period of sablefish fishing and the sheer volume of sablefish targeting during this period increases a vessel's chance of also catching halibut. Halibut caught by longline often survive the capture-and-release process if they are released carefully. However, not all halibut survive capture and discard, which means that delaying effectiveness of this final rule could result in unnecessary halibut discard mortality.

A delay in effectiveness of this rule could unnecessarily prevent sablefish longliners from retaining incidentally caught halibut that might die from the capture-and-release process. This rule would also relieve a regulatory restriction in that it would allow vessels to retain halibut that they could not otherwise access. For these reasons, delaying the effectiveness of this final rule would be contrary to public interest.

List of Subjects in 50 CFR Part 300

Fisheries, Fishing, Reporting and recordkeeping requirements, Treaties.

Dated: August 6, 2001.

William T. Hogarth,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set out in the preamble, 50 CFR part 300 is amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

1. The authority citation for 50 CFR part 300, subpart E continues to read as follows:

Authority: 16 U.S.C. 773-773k.

2. In § 300.63, paragraphs (a)(3) and (a)(4) are re-designated as paragraphs (a)(4) and (a)(5), respectively, and a new paragraph (a)(3) is added to read as follows:

§ 300.63 Catch sharing plans, local area management plans, and domestic management measures.

* * * * *

(a) * * *

(3) A portion of the Area 2A Washington recreational TAC is allocated as incidental catch in the primary directed longline sablefish fishery north of 46°53′18″ N. lat, (Pt. Chehalis, WA), which is regulated under 50 CFR 660.323(a)(2). This fishing opportunity is only available in years in which the Area 2A TAC is greater than 900,000 lb (408.2 mt,) provided that a minimum of 10,000 lb (4.5 mt) is available above a Washington recreational TAC of 214,100 lb (97.1 mt). Each year that this harvest is available, the landing restrictions necessary to keep this fishery within its allocation will be recommended by the Pacific Fishery Management Council at its spring meetings, and will be published in the **Federal Register**. These restrictions will be designed to ensure the halibut harvest is incidental to the sablefish harvest and will be based on the amounts of halibut and sablefish available to this fishery, and other pertinent factors. The restrictions may include catch or landing ratios, landing limits, or other means to control the rate of halibut landings.

(i) In years when this incidental harvest of halibut in the directed sablefish fishery north of 46°53′18″ N. lat. is allowed, it is allowed only for vessels using longline gear that are registered to groundfish limited entry permits with sablefish endorsements and that possess the appropriate incidental halibut harvest license issued by the Commission.

(ii) It is unlawful for any person to possess or land halibut south of 46°53′18″ N. lat that were taken and retained north of 46°53′18″ N. lat. as incidental catch authorized by this section in the directed longline sablefish fishery.

* * * * *

[FR Doc. 01–20119 Filed 8–9–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 010710173–1183–02; I.D. 070901C]

RIN 0648–AO91

Fisheries of the Northeastern United States; Summer Flounder, Scup, Black Sea Bass, Loligo Squid, Illex Squid, Atlantic Mackerel, Butterfish, and Bluefish Fisheries; Framework Adjustment 1

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement measures contained in Framework Adjustment 1 to the Atlantic Mackerel, Squid, and Butterfish; Summer Flounder, Scup, and Black Sea Bass; and Bluefish Fishery Management Plans (FMPs). This final rule modifies the quota-setting process to allow the Mid-Atlantic Fishery Management Council (Council) to set aside up to 3 percent of total allowable landings (TAL) specified for these species to be used for research purposes. This rule also announces that NMFS is deferring action on the tilefish portion of this rule until the regulations implementing the Tilefish FMP are effective. The intent of this action is to foster cooperative research efforts by fishermen and scientists, and to encourage the collection of information to improve management of these fisheries.

DATES: August 10, 2001.

ADDRESSES: Copies of Framework Adjustment 1 to the Atlantic Mackerel, Squid, and Butterfish; Summer Flounder, Scup, and Black Sea Bass; and Bluefish FMPs, its Environmental Assessment (EA), and Regulatory Impact Review (RIR) are available on request from Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council, 300 South New Street, Dover, DE 19904–6790.

FOR FURTHER INFORMATION CONTACT: David M. Gouveia, Fishery Policy Analyst; (978) 281–9280; fax (978) 281–9135; e-mail david.gouveia@noaa.gov.

SUPPLEMENTARY INFORMATION: Each of the FMPs includes an annual specification process, which provides that TAL and other measures be established to achieve the biological targets specified in the FMPs for each fishery. The annual harvest limits are determined by the Council, based on Technical Monitoring Committee recommendations. The Monitoring Committees generally meet in the summer to develop TAL recommendations and management measures for the upcoming fishing year that are necessary to achieve biological targets. The Council reviews the Monitoring Committees' recommendations and any public comments prior to submitting its recommendations to NMFS. NMFS then is responsible for reviewing the Council's recommendations and ensuring the management measures will have at least a 50-percent likelihood of achieving the biological targets for each of the respective fisheries.

This action modifies the quota-setting process for the aforementioned fisheries by allowing the Council to expand its resource allocation scheme to include a quota allocation dedicated to research endeavors. This action will allow the Council to set aside up to 3 percent of TAL in each of these fisheries to be used for research purposes, with the remaining portion of the TAL allocated as currently specified in the FMPs.

Framework 1 provides a mechanism to fund research and compensate vessels through the sale of fish harvested under the research quota. This establishes an incentive for vessels to participate in research activities. In addition, this action provides researchers with a variety of options for conducting research. This action will allow: (1) Both recreational and commercial vessels to sell fish harvested under research quota (recreational vessels cannot otherwise sell fish); (2) research and commercial activities to be conducted separately, rather than on the same trip; and (3) researchers the option of harvesting up to 25 percent of the research quota allocated to species, even if the research did not directly involve that species. Funds generated through the sale of the research quota will help defray some of the costs associated with conducting research, such as decreased vessel efficiency, additional labor costs, and additional fuel and supplies.

On an annual basis, the Council will request that NMFS solicit proposals from industry for the upcoming fishing year, based on research priorities identified by the Council. Each year, NMFS will publish a Request for Proposals (RFP) in the **Federal Register**, consistent with procedures and requirements established by the NOAA Grants Office. Prior to the Council's quota-setting meetings, which are conducted in the summer, NMFS will convene a review panel, including the Council's Comprehensive Management Committee (Committee)and technical experts, to review proposals submitted in response to the RFP. The Council has authorized the Committee members to act in their individual capacity on behalf of the Council to recommend which research proposals should be authorized to utilize the research quotas.

It is anticipated that most proposals will request that vessels conducting research be exempt from certain management measures. To ease the burden on researchers, the analysis of the impacts associated with the anticipated exemptions will be included as part of the annual quota specification packages submitted by the Council. This process is intended to satisfy the analytical and public notice provisions of the Exempted Fishing Permit (EFP) regulations at 50 CFR 600.745. However, those individuals submitting proposals that include vessel activities that extend beyond the scope of the analysis provided by the Council may be required to provide additional analyses before issuance of an EFP will be considered. The final decision concerning the grant proposal will not be made by the NOAA Grants Office until NMFS' approval of the applicant's EFP request, if applicable.

NMFS and the NOAA Grants Office will then consider the Committee's recommendations, provide final approval of the projects, and exempt selected vessel(s) from regulations specified in each of the respective FMPs through written notification to the project proponent. Research projects will be conducted in accordance with provisions approved by the NOAA Grants Office and provided in an EFP issued by NMFS. The grant awards approved under the RFPs will be for the upcoming fishing year, January 1 through December 31, annually. Proposals to fund research that would start prior to, or that would end after the fishing year, would not be eligible for consideration. All research and/or compensation trips must be completed within the fishing year for which the research grant was awarded. The review of proposals by NMFS and the NOAA Grants Office will be completed during the proposed rule comment period for the annual specifications. If any proposals are disapproved by NMFS and/or the NOAA Grants Office, NMFS will reallocate the disapproved research quota to the respective commercial and recreational fisheries.

Framework 1, as submitted by the Council, also included the same modifications to the quota-setting process for the tilefish fishery. On May 11, 2001, NMFS approved the Tilefish FMP. However, the regulations implementing the Tilefish FMP have not yet been approved by NMFS. Therefore, NMFS is deferring action on the tilefish portion of Framework 1 until NMFS publishes the final regulations implementing the Tilefish FMP. The final rule implementing the Tilefish FMP will include, as part of its quota-setting process, a set-aside of up to 3 percent of the tilefish TAL for research.

The EA and RIR prepared for this action considered the potential impacts of this framework, although Framework 1 does not implement management measures. This action establishes a management system that will allow research set-aside quotas to be set annually as part of the Council's quota-

setting process. The amount of research set-aside quota available will range between 0 and 3 percent of each species' TAL, depending on the research proposals submitted in response to a solicitation for research proposals that will be published in the **Federal Register**, and the recommendation of the Council in the specification-setting process. Should proposals be disapproved by NMFS or the NOAA Grants Office, the research quota will be reallocated (i.e., added back into) the TAL. This action is not expected to result in negative short-term impacts to a significant number of vessels participating in the summer flounder, scup, black sea bass, *Loligo* squid, *Illex* squid, Atlantic mackerel, butterfish, and bluefish fisheries. Projects funded under the research set-aside will enhance the understanding of the resource and contribute to the body of information on which management decisions are made. Therefore, this action will yield positive long-term impacts as a result of the anticipated improvements to management provided by this action.

Abbreviated Rulemaking

NMFS is revising the regulations under the framework abbreviated rulemaking procedures codified at 50 CFR part 648, subparts B, G, H, I and J. These procedures require the Council, when making specifically allowed adjustments to the regulations, to develop and analyze the actions over the span of at least two Council meetings. The Council must provide the public with advance notice of both the proposals and the analysis and with an opportunity to comment on them at the first meeting and before and at the second Council meeting. Upon review of the analysis and public comment, the Council may recommend to the Administrator, Northeast Region, NMFS, that the measures be published as a final rule if certain conditions are met. NMFS may publish the measures as a final rule, or as a proposed rule if additional public comment is necessary.

The public was provided the opportunity to comment on the management measures contained in Framework 1 at the Council's October 10-12, 2000; December 12-14, 2000; and February 6-8, 2001, meetings. Documents summarizing the Council's proposed action and the analysis of biological and economic impacts of this action and of alternative actions were available for public review at the December 12-14, 2000, meeting and prior to the final February 8, 2001, meeting, as is required under the framework adjustment procedures. Written comments could have been submitted by the public up to and during the final meeting. No comments were received.

Classification

The Regional Administrator determined that this framework adjustment to the FMP is necessary for the conservation and management of the summer flounder, scup, black sea bass, *Loligo* squid, *Illex* squid, Atlantic mackerel, butterfish, and bluefish fisheries and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

This notice contains collection-of-information requirements subject to the Paperwork Reduction Act. The submission requirements for research proposals are cleared under OMB Control Numbers 0348-0043, 0348-0044, and 0648-0309.

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

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553 *et seq.* or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable. Nevertheless, the impacts of this action on affected small entities were considered in the RIR contained in the supporting analyses for Framework 1. The impacts are described in the **SUPPLEMENTARY INFORMATION** section of the preamble to this final rule.

This final rule modifies the quota-setting process to allow the Council to recommend, and for NMFS to set aside, up to 3 percent of TAL of the summer flounder, scup, black sea bass, Loligo squid, Illex squid, Atlantic mackerel, butterfish, and bluefish fisheries to be used for research purposes. This action is merely an authorization to allow for a research set-aside rather than an action to set aside TAL and does not, in itself, impose any new management measures. Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator for Fisheries, NOAA (AA), finds that notice and opportunity to comment on this final rule is unnecessary and contrary to the public interest for several reasons. First, public meetings held by the Council to discuss the management system implemented by this final rule provided prior notice and opportunity for public comment. Additionally, the opportunity for public comment on fishery-specific research set-asides will be provided through the specifications process before any research set-aside becomes final. Thus, given the past and future opportunities to comment on this rule, an opportunity to provide comments at this time is unnecessary. Proposals for research under this framework must be submitted, considered and awarded before 2002, and the 2002 specifications for the applicable fisheries must be in place with a research set-aside before any research can proceed. Accordingly, delaying the process to allow the public to comment at this time would be contrary to the public interest because it would delay the submission and review of research proposals associated with the research set-asides allowed by this action. For the same reasons, the AA has also determined that it is unnecessary and contrary to the public interest to delay for 30 days implementation of modifications to the quota-setting process associated with this final rule. Furthermore, because the regulation does not impose requirements on the public nor require the public to come into compliance with any regulation, a 30 day delay will neither burden nor harm any member of the public and is therefore unnecessary.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: August 3, 2001.

John Oliver,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.14, the introductory text to paragraphs (j), (k), (l), (m), (p), (q), (u), (v), and (w) is revised to read as follows:

§ 648.14 Prohibitions.

* * * * *

(j) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, unless participating in a research activity as described in § 648.100(f), it is unlawful for any person owning or operating a vessel issued a summer flounder permit (including a

moratorium permit) to do any of the following:

* * * * *

(k) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, unless participating in a research activity as described in § 648.120(e), it is unlawful for any person owning or operating a vessel issued a scup permit (including a moratorium permit) to do any of the following:

* * * * *

(l) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, unless participating in a research activity as described in § 648.120(e), it is unlawful for the owner or operator of a party or charter boat issued a scup permit (including a moratorium permit), when the boat is carrying passengers for hire or carrying more than three crew members if a charter boat or more than five members if a party boat to:

* * * * *

(m) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, unless participating in a research activity as described in § 648.100(f), it is unlawful for the owner and operator of a party or charter boat issued a summer flounder permit (including a moratorium permit), when the boat is carrying passengers for hire or carrying more than three crew members if a charter boat or more than five members if a party boat, to:

* * * * *

(p) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, unless participating in a research activity as described in § 648.21(g), it is unlawful for any person owning or operating a vessel issued a valid mackerel, squid, and butterfish fishery permit, or issued an operator's permit, to do any of the following:

* * * * *

(q) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, unless participating in a research activity as described in § 648.21(g), it is unlawful for the owner and operator of a party or charter boat issued a mackerel, squid, and butterfish fishery permit (including a moratorium permit), when the boat is carrying passengers for hire, to do any of the following:

* * * * *

(u) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, unless participating in a research activity as described in § 648.140(e), it is unlawful for any person owning or operating a vessel issued a black sea bass permit (including a moratorium permit) to do any of the following:

* * * * *

(v) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, unless participating in a research activity as described in § 648.140(e), it is unlawful for the owner and operator of a party or charter boat issued a black sea bass permit (including a moratorium permit), when the boat is carrying passengers for hire or carrying more than three crew members if a charter boat or more than five members if a party boat, to:

* * * * *

(w) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, unless participating in a research activity as described in § 648.160(h), it is unlawful for any person to do any of the following:

* * * * *

3. In § 648.21, paragraphs (a), (b), and (c) are revised, and paragraph (g) is added to read as follows:

§ 648.21 Procedures for determining initial annual amounts.

(a) *Initial recommended annual specifications.* The Atlantic Mackerel, Squid, and Butterfish Monitoring Committee (Monitoring Committee) shall meet annually to develop and recommend the following specifications for consideration by the Mackerel, Squid, and Butterfish Committee of the MAFMC:

(1) Initial OY (IOY), including research quota (RQ), domestic annual harvest (DAH), and domestic annual processing (DAP) for the squids;

(2) IOY, including RQ, DAH, DAP, and bycatch level of the total allowable level of foreign fishing (TALFF), if any, for butterfish; and

(3) IOY, including RQ, DAH, DAP, joint venture processing (JVP), if any, and TALFF, if any, for mackerel. The Monitoring Committee may also recommend that certain ratios of TALFF, if any, for mackerel to purchases of domestic harvested fish and/or domestic processed fish be established in relation to the initial annual amounts.

(b) *Guidelines.* As the basis for its recommendations under paragraph (a) of this section, the Monitoring Committee shall review available data pertaining to: Commercial, recreational, and research project landings; discards; current estimates of fishing mortality; stock status; the most recent estimates of recruitment; virtual population analysis results; levels of noncompliance by harvesters or individual states; impact of size/mesh regulations; results of a survey of domestic processors and joint venture operators of estimated mackerel processing capacity and intent to use that capacity; results of a survey of fishermen's trade associations of estimated mackerel harvesting capacity and intent to use that capacity; and any other relevant information. The specifications recommended pursuant to paragraph (a) of this section must be consistent with the following:

(1) *Squid.* (i) The ABC for any fishing year must be either the maximum OY specified in § 648.20, or a lower amount, if stock assessments indicate that the potential yield is less than the maximum OY.

(ii) IOY is a modification of ABC based on social and economic factors. The IOY is composed of a RQ and DAH. RQ will be based on requests for research quota as described in paragraph (g) of this section. DAH will be set after deduction for RQ, if applicable.

(2) *Mackerel.* (i) Mackerel ABC must be calculated using the formula ABC = T - C, where C is the estimated catch of mackerel in Canadian waters for the upcoming fishing year and T is the catch associated with a fishing mortality rate that is equal to F_{target} (F = 0.25) at an 890,000 mt spawning stock biomass (or greater) and decreases linearly to zero at a 450,000 mt spawning stock biomass (½ B_{MSY}) or below.

(ii) IOY is a modification of ABC, based on social and economic factors, and must be less than or equal to ABC.

(iii) IOY is composed of RQ, DAH and TALFF. RQ will be based on requests for research quota as described in paragraph (g) of this section. DAH, DAP, and JVP will be set after deduction for RQ, if applicable, and must be projected by reviewing data from sources specified in paragraph (a) of this section and other relevant data, including past domestic landings, projected amounts of mackerel necessary for domestic processing and for joint ventures during the fishing year, projected recreational landings, and other data pertinent for such a projection. The JVP component of DAH is the portion of DAH that domestic processors either cannot or will not use. In addition, IOY is based on the criteria set forth in the Magnuson-Stevens Act, specifically section 201(e), and on the following economic factors:

(A) Total world export potential of mackerel producing countries.

(B) Total world import demand of mackerel consuming countries.

(C) U.S. export potential based on expected U.S. harvests, expected U.S. consumption, relative prices, exchange rates, and foreign trade barriers.

(D) Increased/decreased revenues to the United States from foreign fees.

(E) Increased/decreased revenues to U.S. harvesters (with/without joint ventures).

(F) Increased/decreased revenues to U.S. processors and exporters.

(G) Increases/decreases in U.S. harvesting productivity due to decreases/increases in foreign harvest.

(H) Increases/decreases in U.S. processing productivity.

(I) Potential impact of increased/decreased TALFF on foreign purchases of U.S. products and services and U.S.-caught fish, changes in trade barriers, technology transfer, and other considerations.

(3) *Butterfish.* (i) If the Monitoring Committee's review indicates that the stock cannot support a level of harvest equal to the maximum OY, the Monitoring Committee shall recommend establishing an ABC less than the maximum OY for the fishing year. This level represents the modification of maximum OY to reflect biological and ecological factors. If the stock is able to support a harvest level equivalent to the maximum OY, the ABC must be set at that level.

(ii) IOY is a modification of ABC based on social and economic factors. The IOY is composed of a RQ, DAH, and bycatch TALFF that is equal to 0.08 percent of the allocated portion of the mackerel TALFF. RQ will be based on requests for research quota as described in paragraph (g) of this section. DAH and bycatch TALFF will be set after deduction for RQ, if applicable.

(c) *Recommended measures.* Based on the review of the data described in paragraph (a) of this section and requests for research quota as described in paragraph (g) of this section, the Monitoring Committee will recommend to the Squid, Mackerel, and Butterfish Committee the measures from the following list that it determines are necessary to ensure that the specifications are not exceeded:

(1) Research quotas set from a range of 0 to 3 percent of IOY.

(2) Commercial quotas, set after reductions for research quotas.

(3) The amount of *Loligo* and butterfish that may be retained, possessed and landed by vessels issued the incidental catch permit specified in § 648.4(a)(5).

(4) Commercial minimum fish sizes.

(5) Commercial trip limits.

(6) Commercial seasonal quotas/closures for *Loligo* and *Illex*.

(7) Minimum mesh sizes.

(8) Commercial gear restrictions.

(9) Recreational harvest limit, set after reductions for research quotas.

(10) Recreational minimum fish size.

(11) Recreational possession limits.

(12) Recreational season.

* * * * *

(g) *Research quota.* Prior to the Council's quota-setting meetings:

(1) NMFS will publish a Request for Proposals (RFP) in the **Federal Register**, consistent with procedures and requirements established by the NOAA Grants Office, to solicit proposals from industry for the upcoming fishing year, based on research priorities identified by the Council.

(2) NMFS will convene a review panel including the Council's Comprehensive Management Committee, as well as technical experts, to review proposals submitted in response to the RFP.

(i) Each panel member will recommend which research proposals should be authorized to utilize research quota, based on the selection criteria described in the RFP.

(ii) The Regional Administrator and the NOAA Grants Office will consider each panel member's recommendation, provide final approval of the projects and exempt selected vessel(s) from regulations specified in each of the respective FMPs through written notification to the project proponent.

(3) The grant awards approved under the RFPs will be for the upcoming fishing year. Proposals to fund research that would start prior to, or that would end after the fishing year, will not be eligible for consideration. All research and/or compensation trips will have to be completed within the fishing year for which the research grant was awarded.

(4) Research projects will be conducted in accordance with provisions approved and provided in an Exempted Fishing Permit (EFP) issued by the Regional Administrator.

(5) If a proposal is disapproved by the Regional Administrator or the NOAA Grants Office, the Regional Administrator will reallocate the disapproved research quota to the respective commercial and recreational fisheries during the proposed rule comment period for the annual specifications.

(6) Vessels participating in approved research projects may be exempted from certain management measures by the Regional Administrator, provided that one of the following analyses of the impacts associated with the exemptions is provided:

(i) The analysis of the impacts of the requested exemptions is included as part of the annual quota specification packages submitted by the Council; or

(ii) For proposals that require exemptions that extend beyond the scope of the analysis provided by the Council, applicants may be required to provide additional analysis of impacts of the exemptions before issuance of an EFP will be considered, as specified in the EFP regulations at § 648.745(b).

4. In § 648.100, paragraphs (a), (b), and (d) are revised, and paragraph (f) is added to read as follows:

§ 648.100 Catch quotas and other restrictions.

(a) *Annual review.* The Summer Flounder Monitoring Committee shall review the following data on or before August 15 of each year to determine the allowable levels of fishing and other restrictions necessary to achieve, with at least a 50-percent probability of success, a fishing mortality rate (F) that produces the maximum yield per recruit (Fmax): Commercial, recreational, and research catch data; current estimates of fishing mortality; stock status; recent estimates of recruitment; virtual population analysis results; levels of noncompliance by fishermen or individual states; impact of size/mesh regulations; sea sampling and winter trawl survey data or, if sea sampling data are unavailable, length frequency information from the winter trawl survey and mesh selectivity analyses; impact of gear other than otter trawls on the mortality of summer flounder; and any other relevant information.

(b) *Recommended measures.* Based on this review and requests for research quota as described in paragraph (f) of this section, the Summer Flounder Monitoring Committee shall recommend to the Demersal Species Committee of the MAFMC and the Commission the following measures to ensure, with at least a 50-percent probability of success, that the F specified in paragraph (a) of this section will not be exceeded:

(1) Research quota set from a range of 0 to 3 percent of the maximum allowed to achieve the specified F.

(2) Commercial quota set from a range of 0 to the maximum allowed to achieve the specified F, set after reductions for research quota.

(3) Commercial minimum fish size.

(4) Minimum mesh size.

(5) Recreational possession limit set from a range of 0 to 15 summer flounder to achieve the specified F, set after reductions for research quota.

(6) Recreational minimum fish size.

(7) Recreational season.

(8) Recreational state conservation equivalent and precautionary default measures utilizing possession limits, minimum fish sizes, and/or seasons set after reductions for research quota.

(9) Restrictions on gear other than otter trawls.

(10) Adjustments to the exempted area boundary and season specified in § 648.104(b)(1) by 30-minute intervals of latitude and longitude and 2-week intervals, respectively, based on data specified in paragraph (a) of this section, to prevent discarding of sublegal sized summer flounder in excess of 10 percent, by weight.

* * * * *

(d) *Commercial measures.* After such review, NMFS will publish a proposed rule in the **Federal Register** on or about October 15 to implement a research quota, coastwide commercial quota, additional management measures for the commercial fishery, and recreational harvest limit. After considering public comment, NMFS will publish a final rule in the **Federal Register** to implement the measures necessary to ensure, with at least a 50-percent probability of success, that the applicable specified F will not be exceeded.

* * * * *

(f) *Research quota.* See § 648.21(g).

5. In § 648.120, paragraphs (a), (b) introductory text, (b)(1), (b)(4), and (c) are revised, and paragraph (e) is added to read as follows:

§ 648.120 Catch quotas and other restrictions.

(a) *Annual review.* The Scup Monitoring Committee shall review the following data, subject to availability, on or before August 15 of each year. This review will be conducted to determine the allowable levels of fishing and other restrictions necessary to achieve an exploitation rate of 33 percent in 2001 and 19 percent in 2002 and thereafter: Commercial, recreational, and research catch data; current estimates of fishing mortality; stock status; recent estimates of recruitment; virtual population analysis results; levels of noncompliance by fishermen or individual states; impact of size/mesh regulations; impact of gear on the mortality of scup; and any other relevant information.

(b) *Recommended measures.* Based on this review and requests for research quota as described in paragraph (e) of this section, the Scup Monitoring Committee shall recommend the following measures to the Demersal Species Committee of the MAFMC and the Commission to ensure that the exploitation rate specified in paragraph (a) of this section will not be exceeded:

(1) The commercial quota for each of the three periods specified in paragraph (d)(1) of this section, to be set from a range of 0 to the maximum allowed to achieve the specified exploitation rate, set after the deduction for research quota. The commercial quota will be established by estimating the annual total allowable catch (TAC), allocating it into the three periods, and deducting the discard estimates for each period.

* * * * *

(4) Recreational possession limit set from a range of 0 to 50 scup to achieve the specified exploitation rate, set after the reduction for research quota.

* * * * *

(c) *Annual fishing measures.* The Demersal Species Committee shall review the recommendations of the Scup Monitoring Committee. Based on these recommendations and any public comment, the Demersal Species Committee shall recommend to the MAFMC measures necessary to ensure that the specified exploitation rate will not be exceeded. The MAFMC shall review these recommendations and, based on these recommendations and any public comment, recommend to the Regional Administrator measures necessary to ensure that the specified exploitation rate will not be exceeded. The MAFMC's recommendation must include supporting documentation, as appropriate, concerning the environmental and economic impacts of the recommendations. The Regional Administrator shall review these recommendations and any recommendations of the Commission. After such review, NMFS will publish a proposed rule in the **Federal Register** by October 15 to implement: A research quota, a commercial quota, the amount of quota that would be allocated to each of the three periods, landing limits for the Winter I and Winter II periods, the percentage of landings attained during the Winter I fishery at which the landing limits would be reduced, a recreational harvest limit, and additional management measures for the commercial fishery. NMFS will publish a proposed rule in the **Federal Register** on or about March 1 to implement additional management measures for the recreational fishery, if the Regional Administrator determines that such measures are necessary to ensure that the specified exploitation rate will not be exceeded. After considering public comment, NMFS will publish a final rule in the **Federal Register** to implement the annual measures.

* * * * *

(e) *Research quota.* See § 648.21(g).

* * * * *

6. In § 648.140, paragraphs (a), (b) introductory text, (b)(1), (b)(6), and (c) are revised, and paragraph (e) is added to read as follows:

§ 648.140 Catch quotas and other restrictions.

(a) *Annual review.* The Black Sea Bass Monitoring Committee will review the following data, subject to availability, on or before August 15 of each year to determine the allowable levels of fishing and other restrictions necessary to result in a target exploitation rate of 37 percent in 2001 and 2002; and 23 percent (based on Fmax) in 2003 and subsequent years: Commercial, recreational, and research catch data; current estimates of fishing mortality; stock status; recent estimates of recruitment; virtual population analysis results; levels of noncompliance by fishermen or individual states; impact of size/mesh regulations; sea sampling and winter trawl survey data, or if sea sampling data are unavailable, length frequency information from the winter trawl survey and mesh selectivity analyses; impact of gear other than otter trawls, pots and traps on the mortality of black sea bass; and any other relevant information.

(b) *Recommended measures.* Based on this review and requests for research quota as described in paragraph (e) of this section, the Black Sea Bass Monitoring Committee will recommend to the Demersal Species Committee of the Council and the Commission the following measures to ensure that the target exploitation rate specified in paragraph (a) of this section is not exceeded:

(1) A commercial quota allocated to quarterly periods set from a range of 0 to the maximum allowed to achieve the specified target exploitation rate, set after the deduction for research quota.

* * * * *

(6) A recreational possession limit set from a range of 0 to the maximum allowed to achieve the target exploitation rate, set after the reduction for research quota.

* * * * *

(c) *Annual fishing measures.* The Demersal Species Committee shall review the recommendations of the Black Sea Bass Monitoring Committee. Based on these recommendations and any public comment, the Demersal Species Committee shall make its recommendations to the Council with

respect to the measures necessary to ensure that the target exploitation rate specified in paragraph (a) of this section is not exceeded. The Council shall review these recommendations and, based on the recommendations and public comment, make recommendations to the Regional Administrator with respect to the measures necessary to ensure that the target exploitation rate specified in paragraph (a) of this section is not exceeded. Included in the recommendation will be supporting documents, as appropriate, concerning the environmental and economic impacts of the proposed action. The Regional Administrator will review these recommendations and any recommendations of the Commission. After such review, NMFS will publish a proposed rule in the **Federal Register** by October 15 to implement a research quota, a commercial quota, a recreational harvest limit, and additional management measures for the commercial fishery. NMFS will publish a proposed rule in the **Federal Register** by on or about March 1 to implement additional management measures for the recreational fishery, if the Regional Administrator determines that such measures are necessary to ensure that the target exploitation rate specified in paragraph (a) of this section is not exceeded. After considering public comment, NMFS will publish a final rule in the **Federal Register** to implement the measures necessary to ensure that the target exploitation rate specified in paragraph (a) of this section is not exceeded.

* * * * *

(e) *Research quota.* See § 648.21(g).

7. In § 648.160, paragraphs (a), (b), (c), and (d) are revised, and paragraph (h) is added to read as follows:

§ 648.160 Catch quotas and other restrictions.

* * * * *

(a) *Annual review.* On or before August 15 of each year, the Bluefish Monitoring Committee will meet to determine the total allowable level of landings (TAL) and other restrictions necessary to achieve the target fishing mortality rate (F) specified in the Fishery Management Plan for Atlantic Bluefish for the upcoming fishing year or the estimated F for the fishing year preceding the Council submission of the recommended specifications, whichever F is lower. In determining the TAL and other restrictions necessary to achieve the specified F, the Bluefish Monitoring Committee will review the following data, subject to availability: Commercial, recreational, and research catch data; current estimates of fishing mortality; stock status; recent estimates of recruitment; virtual population analysis results; levels of noncompliance by fishermen or individual states; impact of size/mesh regulations; sea sampling data; impact of gear other than otter trawls and gill nets on the mortality of bluefish; and any other relevant information.

(b) *Recommended measures.* Based on the annual review and requests for research quota as described in paragraph (h) of this section, the Bluefish Monitoring Committee shall recommend to the Coastal Migratory Committee of the Council and the Commission the following measures to ensure that the F specified in paragraph (a) of this section will not be exceeded:

(1) A TAL set from a range of 0 to the maximum allowed to achieve the specified F.

(2) Research quota set from a range of 0 to 3 percent of TAL.

(3) Commercial minimum fish size.

(4) Minimum mesh size.

(5) Recreational possession limit set from a range of 0 to 20 bluefish to achieve the specified F.

(6) Recreational minimum fish size.

(7) Recreational season.

(8) Restrictions on gear other than otter trawls and gill nets.

(c) *Allocation of TAL*—(1) *Recreational harvest limit.* A total of 83 percent of the TAL will be allocated to the recreational fishery as a harvest limit. If research quota is specified as described in paragraph (h) of this section, the recreational harvest limit will be based on the TAL remaining after the deduction of the research quota.

(2) *Commercial quota.* A total of 17 percent of the TAL will be allocated to the commercial fishery as a quota. If 17 percent of the TAL is less than 10.5 million lb (4.8 million kg) and the recreational fishery is not projected to land its harvest limit for the upcoming year, the commercial fishery may be allocated up to 10.5 million lb (4.8 million kg) as its quota, provided that the combination of the projected recreational landings and the commercial quota does not exceed the TAL. If research quota is specified as described in paragraph (h) of this section, the commercial quota will be based on the TAL remaining after the deduction of the research quota.

(d) *Annual fishing measures.* The Council's Coastal Migratory Committee shall review the recommendations of the Bluefish Monitoring Committee. Based on these recommendations and any public comment, the Coastal Migratory Committee shall recommend to the Council measures necessary to ensure that the applicable specified F will not be exceeded. The Council shall review these recommendations and, based on the recommendations and any public comment, recommend to the Regional Administrator by September 1 measures necessary to ensure that the applicable specified F will not be exceeded. The Council's recommendations must include supporting documentation, as appropriate, concerning the environmental, economic, and social impacts of the recommendations. The Regional Administrator shall review these recommendations and any recommendations of the Commission. After such review, NMFS will publish a proposed rule in the **Federal Register** on or about October 15, to implement a research quota, a coastwide commercial quota, a recreational harvest limit, and additional management measures for the commercial and recreational fisheries to ensure that the applicable specified F will not be exceeded. After considering public comment, NMFS will publish a final rule in the **Federal Register**.

* * * * *

(h) *Research quota.* See § 648.21(g).

[FR Doc. 01–20113 Filed 8–9–01; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 66, No. 155
Friday, August 10, 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 THE TREASURY

Customs Service

19 CFR Parts 12, 113, 151, and 162

RIN 1515–AC87

Dog and Cat Protection Act

AGENCY: Customs Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Customs Regulations to implement certain provisions of the Dog and Cat Protection Act of 2000. The Dog and Cat Protection Act of 2000 prohibits the importation of any products containing dog or cat fur, and provides for civil and criminal penalties for violations of the Act. This document proposes to set forth in the regulations the prohibitions on dog and cat fur importations and the penalties for violations. The document also proposes to implement the provision of the Act pertaining to Customs certification of domestic and foreign commercial laboratories to test products to determine if the products intended to be imported into the United States contain dog or cat fur. The proposed regulations implement Federal law prohibiting these imports in order to discourage inhumane practices abroad concerning the treatment of dogs and cats.

DATES: Comments must be received on or before October 9, 2001.

ADDRESSES: Written comments may be addressed to, and inspected at, U.S. Customs Service, Office of Regulations and Rulings—Regulations Branch, 1300 Pennsylvania Avenue—3rd Floor, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: *On laboratory procedures*—Renee Stevens, Laboratories & Scientific Services, Office of Information and Technology, (202) 927–0941;

On trade enforcement matters—Luan T. Cotter, Trade Programs—Commercial Enforcement, Office of Field Operations, (202) 927–1249; and

On penalty and forfeiture policy and procedural matters—Jeremy Baskin, Penalties Branch, Office of Regulations and Rulings, (202) 927–2344.

SUPPLEMENTARY INFORMATION:

Background

I. The Dog and Cat Protection Act of 2000, in General

Congress found that products made with dog and cat fur are being imported into and sold in the United States and that these products are often deceptively labeled to prevent consumers, as well as retailers and importers, from ascertaining the true content of the fur contained in the products they purchase in the U.S. Congress also found that available evidence suggests that producers of dog and cat fur products house, transport, and slaughter these dogs and cats for their fur in inhumane ways. Based on these findings, Congress promulgated the Dog and Cat Protection Act of 2000 (the ''Act''), as chapter 3 of Subtitle B of Title I of the Tariff Suspension and Trade Act of 2000. This Act was signed into law on November 9, 2000 (Pub. L. 106–476, 114 Stat. 2101, codified at 19 U.S.C. 1308).

The provisions of the Act amend Title III of the Tariff Act of 1930 by adding a new section 308, entitled ''Prohibition on importation of dog and cat fur products.'' In general, the provisions of the new section 308 prohibit the importation, exportation, introduction into interstate commerce, manufacture for introduction into interstate commerce, offer for sale, sale, transportation, or distribution in the U.S. of any products made with dog or cat fur. This section also provides for civil and criminal penalties for violations of the Act, including the forfeiture of prohibited products and the potential debarment of individuals from engaging in commerce involving fur products. Further, section 308 also authorizes the Secretary of the Treasury to offer rewards for information concerning violations, and provides any persons accused of certain violations with an affirmative defense if they can demonstrate that they exercised reasonable care in determining the nature of the products alleged to have been imported or exported in violation of the Act. Lastly, this section directs Customs to develop a program of certifying U.S. and foreign laboratories for making reliable assessments of whether products are made with dog or cat fur.

This document proposes to amend the Customs Regulations (19 CFR chapter I) to set forth the prohibited conduct defined in the Act. The document also proposes to set forth the penalty, forfeiture, and reward provisions, and the provision regarding the affirmative defense of reasonable care for persons accused of violating provisions of the Act. In addition the document proposes to implement the provision regarding the accreditation of domestic and foreign laboratories for testing products to determine if the products contain dog or cat fur.

II. Specific Provisions of the Dog and Cat Protection Act of 2000

A. Prohibited Conduct

For Customs purposes, the Act prohibits any person from importing into, or exporting from, the U.S. any dog or cat fur product. The Act provides an exception for the importation, exportation, or transportation, for noncommercial purposes, of deceased personal pets, that includes such pets preserved through taxidermy. The terms ''cat fur,'' ''dog fur,'' ''dog or cat fur product,'' and ''person'' are specifically defined in the Act.

Prohibited and restricted merchandise are generally provided for in part 12 of the Customs Regulations. It is proposed to add a new subheading for dog and cat fur and to add a new § 12.64 to provide for the Act's provisions pertaining to the prohibited conduct. The definitions for the terms ''cat fur,'' ''dog fur,'' ''dog or cat fur product,'' and ''person'' will be provided for at paragraph (a) of the new § 12.64. The nature of the prohibited conduct will be provided for at paragraph (b) of the new § 12.64. Paragraph (c) will provide that any products containing dog or cat fur imported or exported contrary to the provisions of § 12.64 are subject to seizure and forfeiture.

B. Penalty and Reward Provisions

The Act provides that any person who violates any provision of new section 308, in addition to any other civil or criminal penalty that may be imposed under title 18 of the United States Code or any other provision of law, may be assessed a civil penalty of not more than $10,000 for each separate knowing and intentional violation, $5,000 for each

separate grossly negligent violation, or $3,000 for each separate negligent violation. Further, the violator may be prohibited from importing, exporting, or selling any fur product in the United States if it is found that the person engaged in a pattern or practice of actions that has resulted in a final administrative determination with respect to the assessment of civil penalties for knowing and intentional or grossly negligent violations of section 308. In determining the amount of civil penalties assessed for violation of section 308, the degree of culpability, any history of prior violations, ability to pay, the seriousness of the violation, and any other matters as fairness may require will be taken into account. No penalty will be assessed under the Act against a person unless the person is given written notice and an opportunity for a hearing. Lastly, a reward of not less than $500 will be paid to any person who furnishes information that establishes or leads to a civil penalty assessment, debarment, or forfeiture of property for any violation of the Act.

These penalty and reward provisions are proposed to be provided for at paragraphs (b)–(d) of new § 162.81. Paragraph (a) of new § 162.81 will reference the prohibited conduct provided for at new § 12.64.

C. The Affirmative Defense of Reasonable Care

Any person charged with a penalty under the provisions of the Act has a defense to that proceeding if he establishes that he exercised reasonable care in determining the nature of the products alleged to have resulted in such violation, and in ensuring that the products were accompanied by documentation, packaging, and labeling that were accurate as to the nature of the products. One of the procedures prescribed by the Act as an indicia of reasonable care is use of a Customs-accredited laboratory's determination that dog or cat fur is not contained in an item. While the use of a Customs-accredited laboratory is not required to avoid liability, it may prove dispositive in determining whether the person exercised reasonable care.

This affirmative defense provision is proposed to be provided for in paragraph (e) of new § 162.81.

D. Customs Accreditation of Fur Testing Laboratories

Section 151.12 of the Customs Regulations (19 CFR 151.12) concerns the accreditation of commercial laboratories. Paragraph (b) of § 151.12 explains, in general, what a Customs-accredited laboratory is and provides that accreditation is restricted to facilities within the United States that analyze certain commodities to determine elements relating to the admissibility, quantity, composition, or characteristics of imported merchandise. Because the Act requires Customs to provide for a process by which accreditation will be extended to foreign testing laboratories that can demonstrate to Customs reliable assessments of whether products intended for sale or consumption in the United States are made with dog or cat fur, it is proposed to amend this paragraph by adding another sentence to explain Customs limited accreditation of foreign laboratories to analyze products to determine if they contain dog or cat fur.

Regarding the process by which testing laboratories, whether domestic or foreign, can qualify for certification by Customs, the application and accreditation procedures currently provided for at § 151.12 and the fee schedule explained in T.D. 99–67 will apply. Paragraph (d) of § 151.12 currently provides that accreditation may be sought by a commercial laboratory in any commodity group listed in paragraph (d)(2) of the section, and explains that applicable test procedures are listed in Commodity Group Brochures. To provide for Customs accreditation of commercial laboratories for purposes of the Act, Customs proposes to amend paragraph (d)(2) to add a new subparagraph (xvi) that will provide for the accreditation of laboratories in the testing of products containing fur, regardless of the classification of the products under the tariff schedule (HTSUS), to determine if the products contain any dog or cat fur. Customs will provide for the dog and cat fur testing procedures in a new Commodity Group Brochure. This proposed amendment will also reference the provisions of proposed §§ 12.64 and 151.12(b) discussed above.

With the accreditation of foreign laboratory facilities by Customs, further amendments are required regarding bonding, the payment of accreditation/reaccreditation fees, and laboratory operations because the present regulatory scheme only concerns laboratory facilities located and operations occurring in the United States.

Regarding bonding, paragraph (f)(1)(vii) of § 151.12 concerns the agreement of laboratories to execute a bond when notified of pending accreditation and references the provisions of part 113 of the Customs Regulations. The bond conditions for commercial laboratories are at § 113.67(b), which provides, in part, that if the principal defaults, the obligors must pay liquidated damages and that if the merchandise is restricted merchandise the liquidated damages are equal to three times the value of the merchandise.

Because the risk of malfeasance or nonperformance presented by foreign laboratories accredited by Customs is great, given the distance and lack of enforcement opportunities, and because prohibited, not merely restricted, merchandise is at issue, the following amendments are proposed. First, it is proposed to amend § 151.12(f)(1)(vii) to provide that when laboratories located outside of the United States are notified of pending accreditation/reaccreditation, a bond in the amount of a minimum of $ 1 million will be required to be executed in accordance with the provisions of part 113 of the Customs Regulations. Also, to secure the payment of any liquidated damages which may be assessed against the laboratory, it is proposed to further amend § 151.12(f)(1)(vii) to provide that the foreign laboratory have a designated resident corporate surety in the United States. It is also proposed to amend the provisions of § 113.67(b)(2)(i) to provide that if the principal defaults in the case of a bond taken by a foreign laboratory accredited to test products to determine if the products contain dog or cat fur, the obligors agree to pay liquidated damages equal to nine times the value of the merchandise.

Paragraphs (f)(1)(xi) and (h)(1)(i) of § 151.12 concern the fee requirements for accreditation/reaccreditation of commercial laboratories. With the accreditation of foreign laboratories, foreign exchange rate fluctuations—respecting assessed costs—and the payment of variable fee assessments for international travel, per diem and background expenses prior to Customs review of an application for accreditation become issues. Accordingly, it is proposed to amend the second sentences of these provisions to limit their scope to domestic laboratories and to add new third sentences to provide that foreign laboratories applying for accreditation/reaccreditation must submit the whole of variable charges assessed for international travel, per diem and background expenses in U.S. currency before Customs will undertake to review their application for accreditation.

A change is also needed to paragraph (j) of § 151.12, which concerns how Customs-accredited laboratories should operate. Paragraph (j)(1) explains the procedure to be followed regarding the testing of sample merchandise. The

paragraph requires Customs supervision when merchandise samples are split for testing by accredited laboratories. Since the dog and cat fur-testing operations of foreign laboratories will be outside of the United States, Customs cannot supervise the procedure regarding the splitting of samples. Accordingly, this regulatory provision must be amended. It is proposed to amend paragraph (j) by adding a sentence that provides that the requirements regarding samples only apply to domestic laboratory operations and not to foreign laboratory operations accredited for purposes of the Dog and Cat Protection Act of 2000. Another sentence will be added to require that if a foreign laboratory accredited by Customs to test for dog and cat fur certifies that the product does not contain dog or cat fur, the certification submitted by an importer must be accompanied by the reports of the laboratory's testing result.

III. Miscellaneous and Organizational Change

On September 21, 2000, the Commissioner of Customs announced certain organizational changes at Customs. One of these changes involved reassigning oversight of the Laboratories & Scientific Services from the Assistant Commissioner, Office of Field Operations, to the Assistant Commissioner, Office of Information and Technology (OIT). This action was taken so that Laboratories & Scientific Services could take better advantage of the technical expertise and services offered by OIT. Because the regulations providing for commercial laboratories expressly reference the Office of Field Operations at § 151.12(a), it is proposed to amend this provision to reference the Office of Information and Technology.

Comments

Before adopting these proposed regulations as a final rule, consideration will be given to any written comments timely submitted to Customs, including comments on the clarity of this proposed rule and how it may be made easier to understand. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4 of the Treasury Department Regulations (31 CFR 1.4), and § 103.11(b) of the Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue—3rd Floor, NW, Washington, D.C.

The Regulatory Flexibility Act And Executive Order 12866

Pursuant to provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that, if adopted, the proposed amendments will not have a significant economic impact on a substantial number of small entities. The proposed amendments merely set forth statutory prohibitions on the importation of products containing dog and cat fur and provide for a laboratory certification process that Customs has been directed to implement. Accordingly, the proposed amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. This amendment does not meet the criteria for a ''significant regulatory action'' as specified in Executive Order 12866.

Paperwork Reduction Act

The collection of information in the current regulations has already been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) and assigned OMB control number 1515–0155 (Application and other documents pertaining to accreditation of commercial laboratories). This notice of proposed rulemaking does not involve any material change to the existing approved information collection.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB.

Part 178 of the Customs Regulations (19 CFR part 178), which lists the information collections contained in the regulations and control numbers assigned by OMB, would be amended accordingly if this proposal is adopted.

List of Subjects

19 CFR Part 12

Animals, Customs duties and inspection, Entry of merchandise, Exports, Furs, Imports, Labeling, Marking, Prohibited merchandise, Reporting and recordkeeping requirements, Restricted merchandise, Seizure and forfeiture.

19 CFR Part 113

Bonds, Customs duties and inspection, Exports, Foreign commerce and trade statistics, Imports, Laboratories, Reporting and recordkeeping requirements, Surety bonds.

19 CFR Part 151

Customs duties and inspection, Examination, Exports, Imports, Laboratories, Licensing, Penalties, Reporting and recordkeeping requirements, Sampling and testing.

19 CFR Part 162

Administrative practice and procedure, Customs duties and inspection, Exports, Imports, Inspection, Law enforcement, Penalties, Prohibited merchandise, Restricted merchandise, Reporting and recordkeeping requirements, Seizures and forfeitures.

Proposed Amendments to the Regulations

For the reasons stated above, it is proposed to amend parts 12, 113, 151, and 162 of the Customs Regulations (19 CFR parts 12, 113, 151, and 162) as set forth below:

PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The general authority citation for part 12 continues, and a new specific authority for new § 12.64 is added, to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 22, Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

* * * * *

Section 12.64 also issued under 19 U.S.C. 1308;

* * * * *

2. A new center heading consisting of § 12.64 is added after § 12.63 to read as follows:

Dog and Cat Fur

§ 12.64 Products containing dog and cat fur prohibited.

(a) *Definitions.* For purposes of this section, the following terms have the meanings indicated:

Cat fur. ''Cat fur'' means the pelt or skin of any animal of the species Felis catus.

Dog fur. ''Dog fur'' means the pelt or skin of any animal of the species Canis familiaris.

Dog or cat fur product. ''Dog or cat fur product'' means any item of merchandise which consists, or is composed in whole or in part, of any dog fur, cat fur, or both.

Person. ''Person'' means any individual, partnership, corporation, association, organization, business trust, government entity, or other entity subject to the jurisdiction of the U.S.

(b) *Prohibited merchandise.*—(1) *Imported or exported.* It is unlawful for any person to import into, or export

from, the U.S. any dog or cat fur product.

(2) *Exception.* The provisions of paragraph (b)(1) of this section do not apply to the importation or exportation for noncommercial purposes, of deceased personal pets, including such pets preserved through taxidermy.

(c) *Forfeiture.* Any dog or cat fur product imported or exported contrary to the provisions of this section is subject to seizure and forfeiture.

PART 113—CUSTOMS BONDS

1. The general authority citation for part 113 continues to read as follows:

Authority: 19 U.S.C. 66, 1623, 1624.

* * * * *

2. In § 113.67(b)(2)(i), a new sentence is added to the end to read as follows:

§ 113.67 Commercial gauger and commercial laboratory bond conditions.

* * * * *

(b) * * *

(2) * * *

(i) * * *. If the principal defaults in the case of a bond taken by a foreign laboratory accredited to test products to determine if the products contain dog or cat fur, the obligors agree to pay liquidated damages equal to nine times the value of the merchandise. (See, § 151.12(f)(1)(vii) of this chapter.)

* * * * *

PART 151—EXAMINATION, SAMPLING, AND TESTING OF MERCHANDISE

1. The general authority citation for part 151 continues, and a new specific authority citation for § 151.12 is added, to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Notes 22 and 23, Harmonized Tariff Schedule of the United States (HTSUS)), 1624.

Subpart A also issued under 19 U.S.C. 1499.

Section 151.12 also issued under 19 U.S.C. 1308;

* * * * *

2. In § 151.12:

a. Paragraph (a) is amended at the definition for ''Assistant Commissioner'' by removing the words ''Office of Field Operations'' and adding, in their place, the words ''Office of Information and Technology'';

b. paragraph (b) is amended by revising the second sentence and by adding a new third and fourth sentence;

c. paragraph (d)(2) is amended by adding a new paragraph (d)(2)(xvi);

d. paragraph (f) is amended:

(i) at paragraph (f)(1)(vii) by adding a new sentence at the end of the paragraph;

(ii) at paragraph (f)(1)(xi) at the second sentence by removing the words ''the applicant agrees'' and adding, in their place, the words ''domestic applicants agree''; and, by adding a new third sentence; and

(iii) by adding a new paragraph (f)(1)(xii); and

e. paragraph (h)(1)(i) is amended at the second sentence by removing the words ''Before a laboratory'' and adding, in their place, the words ''Before a domestic laboratory''; and by adding a new third sentence;

f. paragraph (j)(1) is amended by revising the first sentence and adding a new sentence at the end of the paragraph.

The additions and revisions to read as follows:

151.12 Accreditation of commercial laboratories.

* * * * *

(b) * * *. A ''Customs-accredited laboratory'' is a commercial laboratory that has demonstrated, to the satisfaction of the Executive Director, pursuant to this section, the capability to perform analysis of certain commodities to determine elements relating to the admissibility, quantity, composition, or characteristics of imported merchandise. For accreditations other than accreditation to determine whether dog or cat fur is contained in articles, a commercial laboratory must be located in the United States. For accreditation to determine whether dog or cat fur is contained in any articles intended for sale or consumption in the United States, a commercial laboratory may be located in a foreign country or the United States. * * *

* * * * *

(d) * * *

(2) * * *

(xvi) Products, regardless of the chapter of the tariff schedule (HTSUS) under which they are classified when entered, to determine if they contain any dog or cat fur (see §§ 12.64, 151.12(b), and 162.81 of this chapter).

* * * * *

(f) * * *

(1) * * *

(vii) * * *. If the commercial laboratory is seeking accreditation for determination of whether a product contains dog or cat fur and is located outside of the United States, the express agreement must provide that the foreign laboratory will execute a bond in accordance with part 113, Customs Regulations, in an amount of a minimum of $1 million, will submit the bond to Headquarters, and that the laboratory will have a resident corporate surety in the United States to secure the payment of any liquidated damages that may be assessed against the laboratory; the application in this instance must identify the name and address of the resident corporate surety.

* * * * *

(xi) * * *. Foreign applicants applying for accreditation/reaccreditation regarding the testing of products for dog and cat fur (see §§ 12.64, 151.12(b), and 162.81 of this chapter) must submit all variable charges assessed for international travel, per diem and background expenses in U.S. currency before Customs will undertake to review their application for accreditation.

(xii) If a commercial laboratory is seeking accreditation for determination of whether a product contains dog or cat fur and is located outside of the United States, the name and address of a resident agent in the United States who is authorized to accept service of process against the foreign laboratory.

* * * * *

(h) * * *

(1) * * *

(i) * * *. Foreign laboratories applying for accreditation/reaccreditation regarding the testing of products for dog and cat fur (see §§ 12.64, 151.12(b), and 162.81 of this chapter) must submit all variable charges assessed for international travel, per diem and background expenses in U.S. currency before Customs will undertake to review their application for accreditation.

* * * * *

(j) *How will Customs-accredited laboratories operate.*—(1) *Samples for testing.* For laboratories other than those foreign laboratories accredited to determine whether a product contains dog or cat fur, upon request by the importer of record of merchandise, the port director will release a representative sample of the merchandise for testing by a Customs-accredited laboratory at the expense of the importer. * * *. If a foreign laboratory accredited by Customs to test for dog and cat fur certifies that the product does not contain dog or cat fur, the certification submitted by an importer must be accompanied by the reports of the laboratory's testing result as set forth in paragraph (j)(2) of this section.

* * * * *

PART 162—INSPECTION, SEARCH, AND SEIZURE

1. The general authority citation for part 162 continues, and a new specific

authority for § 162.81 is added, to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1592, 1593a, 1624.

* * * * *

Section 162.81 also issued under 19 U.S.C. 1308;

* * * * *

2. In § 162.70:

a. paragraph (a)(1) is amended by removing the word ''and'' at the end of the paragraph and adding a semicolon;

b. paragraph (a)(2) is amended by removing the period at the end and adding, in its place, a semicolon and the word ''and''; and

c. a new paragraph (a)(3) is added, to read as follows:

§ 162.70 Applicability.

(a) * * *

(3) Violations of section 308, Tariff Act of 1930, as amended (19 U.S.C. 1308), that occur after November 9, 2000.

* * * * *

3. A new § 162.81 is added, to read as follows:

§ 162.81 Penalties for importation or exportation of products containing dog or cat fur.

(a) *Products containing dog or cat fur.* Any person importing into, or exporting from, the U.S. any dog or cat fur product in contravention of the provisions of § 12.64 of this chapter is subject to civil penalties and the merchandise is subject to seizure and forfeiture.

(b) *Civil monetary penalties.*—(1) *Assessment under 19 U.S.C. 1308.* Any person who imports or exports from the U.S. any dog or cat fur product in contravention of the provisions of § 12.64 of this chapter may, in addition to any other civil or criminal penalty that may be imposed under title 18, United States Code, or any other provision of law, be subject to civil monetary penalties for violation of 19 U.S.C. 1308 of not more than $10,000 for each separate knowing and intentional violation of this section, or not more than $5,000 for each separate grossly negligent violation of this section, or not more than $3,000 for each separate negligent violation.

(2) *Assessment under 19 U.S.C. 1592 or 19 U.S.C. 1595a(b).* Any person who imports into the U.S. any dog or cat fur product in contravention of the provisions of § 12.64 of this chapter may be assessed, in addition to or in lieu of any other civil monetary penalty or penalties, civil monetary penalties under 19 U.S.C. 1592 or 19 U.S.C. 1595a(b). These penalties will be administered under Part V, Tariff Act of 1930, as amended.

(3) *Notice.* In accordance with 19 U.S.C. 1308(c)(1)(D), no penalty may be assessed or imposed under the provisions of paragraphs (b)(1) or (c) of this section against a person unless the person is given notice and opportunity for a hearing with respect to such violation, in accordance with section 554 of title 5, United States Code.

(4) *Factors in assessing penalties.* In determining the amount of civil penalties assessed under paragraphs (b)(1) or (c) of this section, the Secretary of the Treasury will take into account the degree of culpability, any history of prior violations under this statute and regulations, ability to pay, the seriousness of the violation, and such other matters as fairness may require.

(c) *Debarment.* In accordance with 19 U.S.C. 1308(c)(1)(B), the Secretary of the Treasury may prohibit a person from importing or exporting any fur product into or out of the United States if the Secretary finds that the person has engaged in a pattern or practice of actions that has resulted in a final administrative determination with respect to the assessment of civil monetary penalties for knowing and intentional or grossly negligent violations of § 12.64 of this chapter.

(d) *Reward.* The Secretary of the Treasury will pay a reward of not less than $500 to any person who furnishes information that establishes or leads to a civil penalty assessment, debarment, or forfeiture of property for any violation of 19 U.S.C. 1308 or any regulation issued thereunder.

(e) *Affirmative defense.* Any person accused of a violation under 19 U.S.C. 1308 has a defense in any proceeding brought under paragraphs (b)(1) or (c) of this section or 19 U.S.C. 1308 if that person establishes by a preponderance of the evidence that he exercised reasonable care in determining the nature of the products alleged to have resulted in the violation and in ensuring that the products were accompanied by documentation, packaging, and labeling that were accurate as to the nature of the products. If the person can show that the products imported were tested by a Customs-accredited laboratory (see, § 151.12) to attempt to determine the nature of fur contained in an article, the use of a Customs-accredited laboratory may prove dispositive in determining whether that person exercised reasonable care for purposes of applying applicable penalty provisions.

Approved: July 18, 2001.

Charles W. Winwood,

Acting Commissioner of Customs.

Timothy E. Skud,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 01–20081 Filed 8–9–01; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 500

[Docket No. 01N–0284]

RIN 0910–AB71

Import Tolerances

AGENCY: Food and Drug Administration, HHS.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) (we, the agency) is soliciting comment on issues related to the implementation of the import tolerances provision in section 4 of the Animal Drug Availability Act of 1996 (ADAA). The ADAA authorizes FDA to establish drug residue tolerances (import tolerances) for imported food products of animal origin for drugs that are used in other countries, but that are unapproved new animal drugs in the United States. Food products of animal origin that are in compliance with the import tolerance will not be considered adulterated under the Federal Food, Drug, and Cosmetic Act (the act) and may be imported into the United States. We plan to propose a regulation for establishing import tolerances. We plan to hold a public meeting on import tolerances during the comment period for this advance notice of proposed rulemaking (ANPRM) and intend to consider the comments made at the meeting and in response to this ANPRM in writing the proposed regulation. We also will work with the Food Safety Inspection Service of the United States Department of Agriculture and other Federal agencies in the development of the proposed regulation.

DATES: Submit written or electronic comments by December 10, 2001.

ADDRESSES: Submit written or electronic comments 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.

FOR FURTHER INFORMATION CONTACT: Frances Pell, Center for Veterinary Medicine (HFV–235), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0188, e-mail: fpell@cvm.fda.gov.

SUPPLEMENTARY INFORMATION:

I. Background on Import Tolerances

A. Import Tolerances—Legislative History and ADAA

The President signed the ADAA into law on October 9, 1996. Section 4 of the ADAA concerns import tolerances and amends section 512(a) of the act (21 U.S.C. 360b(a)) by adding the following new paragraph at the end:

(6) For purposes of section [402(a)(2)(C)(ii)], a use or intended use of a new animal drug shall not be deemed unsafe under this section if the Secretary establishes a tolerance for such drug and any edible portion of any animal imported into the United States does not contain residues exceeding such tolerance. In establishing such tolerance, the Secretary shall rely on data sufficient to demonstrate that a proposed tolerance is safe based on similar food safety criteria used by the Secretary to establish tolerances for applications for new animal drugs filed under subsection (b)(1). The Secretary may consider and rely on data submitted by the drug manufacturer, including data submitted to appropriate regulatory authorities in any country where the new animal drug is lawfully used or data available from a relevant international organization, to the extent such data are not inconsistent with the criteria used by the Secretary to establish a tolerance for applications for new animal drugs filed under subsection (b)(1). For purposes of this paragraph, ''relevant international organization'' means the Codex Alimentarius Commission or other international organization deemed appropriate by the Secretary. The Secretary may, under procedures specified by regulation, revoke a tolerance established under this paragraph if information demonstrates that the use of the new animal drug under actual use conditions results in food being imported into the United States with residues exceeding the tolerance or if scientific evidence shows the tolerance to be unsafe.

The legislative history notes that ''the bill authorizes FDA to establish import tolerances for new animal drugs not approved in the United States'' and that a September 20, 1996, letter from the Director, United States Congress, Congressional Budget Office (CBO), to the Chairman, Committee on Commerce, includes a statement that CBO expects that the Secretary of Health and Human Services (the Secretary) would not set standards for these tolerances that are significantly different from current practice. H. Rept. 104–823 further clarifies the intention of section 4 of the ADAA by stating that the section authorizes FDA to establish import tolerances by ''using criteria similar to those that it would apply in reviewing the human food safety aspects of an animal drug for which approval is sought in the United States.'' In addition, the report states that FDA may rely on data generated by the drug manufacturer or on data from a relevant international organization such as the Codex Alimentarius Commission. The report further states that section 4 of the ADAA furthers international harmonization of regulatory requirements.

It is currently unlawful to import animal-derived food that contains residues of a drug that is not approved in the United States, unless the Secretary has established an import tolerance for that drug and the residue does not exceed that tolerance. Any amount of residue from a drug not approved in the United States and for which no import tolerance exists, even a level of residue considered safe by the exporting country, would cause the food to be adulterated under section 402(a)(1)(C)(ii) of the act (21 U.S.C. 342(a)(1)(C)(ii)), and denied entry into the United States under section 801(a)(3) of the act (21 U.S.C. 381(a)(3)). It is also unlawful to import animal-derived food that contains residues of a drug approved in the United States, if the residues are present at levels above the established tolerance.

Foreign drug sponsors may choose not to seek full approval in the United States for several reasons. It may be difficult for foreign drug sponsors to seek full approval in the United States, in part because the comprehensive nature of the approval requirements in the United States may require a foreign sponsor to perform studies in the United States that are difficult to arrange from outside the United States. In addition, for some drugs there is little incentive for a drug sponsor to obtain approval of the drug for use in the United States because the drug is used to treat animal disease that does not occur in the United States. In this case, the U. S. target animal safety and efficacy components of the NADA would not be relevant.

Some exporting countries have many more animal drugs approved for use in some species than are currently approved for those species in the United States. Some of these drugs might qualify for approval in the United States, if a drug sponsor were willing to invest in the research studies needed to support approval. Some of these drugs may not be easily approved in the United States, because drug sponsors may not be able to meet one or more requirements of the NADA (21 U.S.C. 360b(b)).

B. Human Food Safety Requirements for NADAs in the United States

The human food safety evaluation of an NADA is predicated on the assumption that the drug product in question will be manufactured consistently from one batch to the next to the same standards of purity, strength, and identity as the product used to generate the human food safety data. The evaluation is also based on the particular conditions of use in the food-producing animal as proposed in the NADA. The human food safety data for an NADA typically include, but are not necessarily limited, to the following:

1. Threshold Assessment—The sponsor generally provides data that allow the agency to conduct a threshold assessment to determine the potential of the new animal drug to cause cancer. The data typically include the results of a battery of genetic toxicity studies, the oral toxicity studies discussed below, and carcinogenicity information regarding structurally similar chemicals in published or proprietary literature.

2. Oral Toxicity Data—The sponsor generally provides data that allow the agency to assess the oral toxicity of the new animal drug in the diet. The data are typically generated through a 90-day rodent and nonrodent mammalian oral toxicity study, a multigeneration rat reproduction study, and a rodent teratology study. The no-effect level dose from the most relevant study divided by a safety factor (typically 100 or 1,000) is used to calculate an acceptable daily intake (ADI) for the animal drug in the human diet. Once the ADI is established, safe concentrations are calculated for total residues of the drug (the parent drug and all metabolites) in edible tissue.

3. Total Residue and Metabolism Data—Total residue depletion and metabolism data are typically generated in studies conducted with a stable radiolabel of the parent drug. The total residue studies provide data on the concentration of the total residues of the drug in the edible tissues and changes in that concentration over time from the cessation of treatment. The metabolism studies are used to determine the nature and disposition of the residues in the edible tissues of the target animal.

4. Target Tissue Determinations—Total residue and metabolism data are used to determine an appropriate target tissue which will serve as an index of the safety of all edible tissues in the target animal. The residues of a drug typically deplete at different rates for different edible tissues. The target tissue

is usually the edible tissue that takes the longest to deplete, but other factors may also be considered when selecting the target tissue. The target tissue is selected such that when the concentration of drug residues is safe for consumption in the target tissue, all other edible tissue is also safe for consumption.

5. Marker Analyte Determination—A marker analyte is determined to serve as a measurable index of the total residues of the drug in the target tissue. The marker analyte may be the parent drug, a metabolite of the parent, or a known combination of metabolites.

6. Determinative and Confirmatory Regulatory Method—The sponsor generally provides a two part (determinative and confirmatory) analytical regulatory method to determine the concentration of the marker residue in the target tissue upon which to base the tolerance (see below). The regulatory method is also used in establishing the withdrawal time and in assuring the safety of food animals treated with the approved new animal drug.

7. Tolerance—A tolerance is established based upon the relationship between the concentration of the marker analyte (measured by the determinative method) and the concentration of total residues of the drug (measured by radiolabel method) at the safe concentration. The concentration of the marker analyte in the target tissue, as measured by the regulatory method, which corresponds to the safe concentration for total residues of the drug in the target tissue, is defined as the tolerance.

8. Withdrawal Study—The sponsor generally provides a withdrawal study (or depletion study) to determine the depletion time necessary from the cessation of treatment of the labeled target animal species at the maximum labeled dose and duration under normal conditions of use to the time when the marker residues in the target tissue are below the tolerance for that drug as measured by the regulatory method.

The human food safety criteria listed above are provided for the information of the reader preparing comments in response to this ANPRM. Some of these criteria would have to be modified for establishing import tolerances. For example, whole animals usually would not be imported into the United States. Therefore, the target tissue for an import tolerance would be the type of tissue that is imported into the United States. A withdrawal study is an example of a study for the approval of an NADA for use of the drug in the United States that would not be necessary for establishing an import tolerance because data from the withdrawal study are not involved in the tolerance calculation. Other criteria, such as the requirement for the sponsor to submit a regulatory method, would remain the same.

II. Agency Request for Information

FDA is soliciting comment on all aspects of import tolerances and specifically on the following issues:

Issue 1: We set tolerances based upon the ADI and the relationship between the marker analyte and the total residue. To establish the tolerance, we consider conditions of use (including formulation, dose, and route of administration) and manufacturing features (including drug potency and purity). Regulatory agencies outside of the United States and international organizations may use different or additional factors to establish maximum residue levels (MRLs). The factors used by these regulatory agencies may include different edible tissue consumption factors or animal husbandry standards such as good agricultural practices. The effect of considering these factors may be a different tolerance value than the value established only on the basis of the human food safety data as presented in section I.B above.

Question: There are different approaches that we could use to find a safe import tolerance. We could look at toxicity and residue data and build in a conservative safety factor. Alternatively, we could also review conditions of use such as good agricultural practices, route of administration, and dose, which may result in a different safety factor or factors. Additionally, we could consider manufacturing information such as that required for a domestic application, which also could result in a different safety factor or factors. Which approach is preferable?

Issue 2: The tolerance established by FDA for a new animal drug approved under section 512(b)(1) of the act is based on data submitted by the sponsor. These data are owned by the drug sponsor (pharmaceutical company, producer organization, etc.) that paid for the study and is accountable for the quality of the research. Each subsequent sponsor seeking approval of the drug under section 512(b)(1) of the act must submit similar human food safety data as required to support the tolerance for their product. Each new animal drug tolerance is established for each drug product, rather than for the drug substance/active ingredient. However, the ADAA allows for data for an import tolerance to include ''data submitted by the drug manufacturer to appropriate regulatory authorities in any country where the new animal drug is lawfully used or data available from a relevant international organization* * * .'' Any country wanting its producers to become eligible to export to the United States, could be a sponsor of an import tolerance.

Question: Only the drug marker residue for the drug substance, not the product formulation or the sponsor of the import tolerance, can be determined by the type of analytical method that is typically used to assay imports. Are there analytical techniques or other approaches that would allow us to determine whether a residue is due to use of the drug product for which the tolerance is approved?

Issue 3: We are considering how we should inform the public of the import tolerance process while also ensuring that we do not disclose trade secrets and confidential commercial information.

Questions:

(a) Should we disclose to the public that we are considering an import tolerance for a new animal drug?

(b) If so, when (e.g, upon request, upon filing)?

(c) How should we do so (e.g., **Federal Register**, Internet)?

(d) How much detail should we provide, keeping in mind that we cannot disclose trade secrets or confidential commercial information?

Issue 4: We are considering amending the regulations at 21 CFR 25.33 to allow a categorical exclusion for import tolerances under the National Environmental Policy Act, if there is information that shows that establishing import tolerances does not have a significant effect on the environment. We are seeking information on whether import tolerances will have a significant effect on the environment.

Issue 5: Please comment on any other aspects of import tolerances you wish to raise.

III. Comments

Interested persons may submit written or electronic comments regarding the advance notice of proposed rulemaking by December 10, 2001. Written or electronic comments should be submitted to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Comments may also be submitted electronically on the Internet at: http://www.fda.gov/dockets/ecomments. Once

on this Internet site, select 01N–0284 Import Tolerances and follow the directions.

We intend to hold a meeting of the Veterinary Medicine Advisory Committee (VMAC) in September 2001. The committee will be asked to discuss answers to questions similar to those posed in the ANPRM. The notice of the date, time, and place for the meeting of the VMAC appears elsewhere in this issue of the **Federal Register**.

This ANPRM is issued under section 4(e) of the ADAA, sections 201, 402, 512, 701, and 801 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 360b, 371, and 381), and under the authority of the Commissioner of Food and Drugs.

Dated: July 16, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–20161 Filed 8–8–01; 11:44 am]

BILLING CODE 4160–01–S

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 157

[USCG 2001–10298]

Double Hull Standards for Vessels Carrying Oil in Bulk; U.S. Position on the Amendment of International Standards for the Phase-Out of Existing Single Hull Tank Vessels

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting; request for comments.

SUMMARY: The Coast Guard will hold a public meeting to discuss the amendment of international standards for the phase-out of oil transportation service for existing single hull tank vessels in international trade that were developed and adopted by the International Maritime Organization (IMO) in April 2001. At the IMO meeting, the U.S. reserved its position on adoption of this amendment to regulation 13G of Annex I to the International Convention for Pollution Prevention from Ships, 1973, as amended by the Protocol of 1978 (MARPOL 73/78). The U.S. reserved its position due to technical differences with the mandated requirements for the phase-out of existing single hull tank vessel requirements of the Oil Pollution Act of 1990 (OPA 90). This public meeting will be used to collect comments and information from the public and industry to develop a final U.S. position to be formally presented to IMO on this matter. The Coast Guard encourages interested parties to attend the meeting and submit comments for discussion during the meeting. In addition the Coast Guard seeks written comments from any party who is unable to attend the meeting.

DATES: We will hold the meeting on Tuesday, 25 September 2001, from 9:30 a.m. to 12 p.m. Comments and related material for the public meeting must reach the Docket Management Facility on or before September 1, 2001. Any other written comments or related material must reach the Docket Management Facility on or before September 28, 2001, to be considered under this notice.

ADDRESSES: We will hold the meeting at the U.S. Coast Guard Headquarters Transpoint Building, room 2415, 2100 Second Street SW., Washington, DC 20593–0001. The telephone number is 202–267–1181. To ensure that your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

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

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

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

(4) By Fax to the Docket Management Facility: 202–493–2251

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

FOR FURTHER INFORMATION CONTACT: For information concerning this notice or the public meeting, contact Mr. Bob Gauvin, Project Manager, Vessel and Facility Operating Standards Division (G–MSO–2), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, telephone 202–267–1053. For questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–5149.

Request for Comments

We encourage you to participate by submitting comments and related material. If you do so, please include your name and address, identify the docket number (USCG–2000–10298), indicate the specific proposed change to which each comment applies, and give the reason for each comment. You may submit your comments and materials by mail or hand delivery. Submit them in an unbound format, no larger than 8\1/2 x 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like confirmation of receipt, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received on or before October 3, 2001.

SUPPLEMENTARY INFORMATION:

How Can I Get Additional Information, Including Copies of This Notice or Other Related Documents?

The Docket Management Facility maintains the public docket for this notice. The docket number for this notice is (USCG 2001–10298). Comments and other documents related to this notice will become part of this docket and will be available for inspection or copying as follows:

- *In person:* You may access the docket room PL–401, on the Plaza Level of the Nassif Building at the same address, between 9 a.m. and 5 p.m., Monday through Friday. The facility is closed on Federal holidays.
- *Electronically:* You may access the docket on the Internet at *http://dms.dot.gov.*

Where Can I Get Information on Service for Individuals With Disabilities?

To obtain information on facilities or services for individuals with disabilities or to request that we provide special assistance at the public meeting, please contact Mr. Bob Gauvin as soon as possible. You will find his address and phone number in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Why Is the Coast Guard Holding This Public Meeting?

Pursuant to OPA 90, the Coast Guard published an Interim Final Rule (IFR) on March 12, 1992, entitled Double Hull Standards for Vessels Carrying Oil in Bulk (57 FR 36222). The IFR, established technical standards for double hulls on vessels carrying oil in

bulk, as cargo or cargo residue that are constructed or undergo a major conversion under contracts awarded after June 30, 1990. The IFR also included a phase-out schedule for existing single hull tank vessels. The IFR amends sections of 33 CFR part 157 for the technical standards of double hulls, and added Appendix G at the end of the part with the phase-out schedule for existing single hull tank vessels from OPA 90. On March 6, 1992, the 32nd session of the IMO's Marine Environmental Protection Committee (MEPC 32), adopted regulations 13F and 13G to Annex I of the MARPOL 73/78. Regulation 13F requires that new tank vessels be designed and constructed with a double hull, mid-deck configuration or other approved hull configuration. Regulation 13F is applicable to new tank vessels of 600 deadweight tons (DWT) and over, contracted on or after July 6, 1993, or which are delivered on or after July 6, 1996. Regulations 13G, established a phase-out schedule which began on July 6, 1995, for existing single hull tank vessels to be removed from oil transportation service or converted with a double hull, mid-deck configuration or other approved hull configuration. Regulation 13G is applicable to existing crude oil and persistent oil carriers of 20,000 DWT or over, or product carriers of 30,000 DWT or over. Copies of Regulations 13F and 13G have been placed in the docket on December 23, 1992, the U.S. Embassy in London deposited a declaration with IMO stating that the express approval of the U.S. Government would be necessary before regulations 13F and 13G of MARPOL 73/78 would enter into force for the U.S. In this declaration, the U.S. cited the technical differences between MARPOL amendments for new and existing tank vessels, and OPA 90 mandatory standards for tank vessels. Since the deposit of the declaration in 1992, the U.S. has not amended its position at IMO regarding regulations 13F and 13G.

On April 27, 2001, the 46th session of the IMO's MEPC (MEPC 46) adopted Resolution MEPC.95(46), ''Amendments to the Annex of the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution From Ships, 1973'', (amendments to regulation 13G of Annex I to MARPOL 73/78 and to the Supplement of the International Oil Pollution Preventions (IOPP) Certificate). Resolution MEPC.95(46) amends the original phase-out requirements for existing single hull tank vessels in regulation 13G of MARPOL Annex I. The amendments affect existing single hull tank vessels of 5000 DWT and over, by reducing the time allowed before phasing-out existing single hull tank vessels. A copy of Resolution MEPC.95(46) has been placed in the docket.

The amendments were adopted in accordance with the tacit amendment procedure allowed under Article 16 of MARPOL 73/78. As a signatory to MARPOL 73/78, the U.S. would be deemed to have accepted these amendments unless we advise IMO otherwise by March 1, 2002.

At the resolution's introduction during MEPC 46, the U.S. delegation verbally reserved its position on the resolution as the U.S. had formally declared a position that an expressed approval by the U.S. would be required before regulation 13G would be accepted as part of MARPOL 73/78, in 1992. The U.S. again reiterated that there were technical differences between the mandatory phase-out schedule of OPA 90 and Resolution MEPC.95(46) that would require a further review prior to a formal position being declared by the U.S.

This public meeting is being held to give the public an opportunity to express their opinions on Resolution MEPC.95(46) prior to the U.S. developing a final policy regarding the acceptance and enforcement of this amendment of regulation 13G of Annex I of MARPOL. The Coast Guard is holding this meeting to discuss the resolution and answer any questions regarding its effects upon its potential formal adoption as part of Annex I of MARPOL 73/78 in March 2002. The Coast Guard intends to listen to the public's concerns and collect related submitted comments before and during this meeting for use in developing the U.S. position regarding any actions or formal declaration being made to IMO regarding the adoption of Resolution MEPC.95(46).

What Issues Should I Discuss at the Meeting or Address in Written Comments?

The public meeting on September 25, 2001, will provide a forum for members of industry and the public to discuss Resolution MEPC.95(46) and its impact of U.S. concerns and the enforcement of OPA 90. OPA 90 mandates a phase-out of all sizes of existing single hull tank vessels constructed or having major conversions after June 30, 1990. OPA 90 is not limited in the size of single tank vessels it effects and does not parallel the phase-out schedule documented in Resolution MEPC.95(46). Specific questions the Coast Guard is interested to see answered in the written or verbal comments are:

1. Should the acceptance of MEPC resolution to amend regulation 13G of Annex I, MARPOL 73/78 be supported, or not supported by the U.S. as a signatory to the convention?

2. As written, what would be the effect of the new MARPOL phase-out schedule on U.S. flag vessels in international trade?

3. What positive and negative economic effects could the adoption of the new amendments to regulation 13G of Annex I of MARPOL have on the transportation of oil in the U.S.?

4. What positive and negative economic effects could the adoption of the new amendments of regulation 13G have on the transportation of oil worldwide?

5. What positive and negative environmental effects could the adoption of the new amendments of regulation 13G have worldwide or in the U.S.?

6. Are there specific parts of the resolution that could be accepted by the U.S., if the resolution as a whole could not be supported for acceptance as written?

7. Should the U.S. Coast Guard make any legislative proposals to the U.S. Congress to amend U.S. law to enforce the new amendments to regulation 13G in U.S. waters?

8. Are there any amendments to Resolution MEPC.95(46), as written, that should be required before the U.S. could support it?

Interested parties who cannot attend the meeting are strongly encouraged to submit issues to the docket for discussion at the meeting prior to September 1, 2001.

What Is the Agenda for the Public Meeting?

The agenda for the meeting on September 25, 2001, is as follows:

- Introduction and Overview of meeting rules;
- Presentation and discussion of present standards for tank vessel phase-out and areas of concern regarding the resolution's impact on those standards;
- Presentation of written statements or comments submitted to the docket prior to the meeting;
- Listening session, verbal comments presented by attending members of the public and industry; and
- Closing statements and possible next steps by the Coast Guard and the U.S. at IMO.

Dated: July 27, 2001.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 01–20150 Filed 8–9–01; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA–4121b; FRL–7028–1]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; NO_X RACT Determination for Latrobe Steel Company in the Pittsburgh-Beaver Valley Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the Commonwealth of Pennsylvania's State Implementation Plan (SIP). The revision was submitted by the Pennsylvania Department of Environmental Protection (PADEP) to establish and require reasonably available control technology (RACT) for Latrobe Steel Company, a major source of nitrogen oxides (NO_X) located in the Pittsburgh-Beaver Valley ozone nonattainment area (the Pittsburgh area). In the Final Rules section of this **Federal Register**, EPA is approving the Commonwealth's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. The 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: Comments must be received in writing by September 10, 2001.

ADDRESSES: Written comments should be addressed to David L. Arnold, Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Pennsylvania Department of Environmental Resources Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Michael Ioff at (215) 814–2166, the EPA Region III address above or by e-mail at ioff.mike@epa.gov. Please note that while questions may be posed via telephone and e-mail, formal comments must be submitted, in writing, as indicated in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: August 1, 2001.

Thomas C. Voltaggio,

Deputy Regional Administrator, Region III.

[FR Doc. 01–20141 Filed 8–9–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CT057–7216c: FRL–7030–1]

Approval and Promulgation of Implementation Plans; Connecticut; Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the ground-level one-hour ozone attainment demonstration State Implementation Plan (SIP) for the Connecticut portion of the New York-Northern New Jersey-Long Island (NY-NJ-CT) severe ozone nonattainment area, submitted by the Connecticut Department of Environmental Protection (CT DEP) on September 16, 1998, as revised to include 2007 motor vehicle emissions budgets and various commitments submitted by the CT DEP on February 8, 2000. EPA is also proposing to approve Connecticut's post-1999 rate-of-progress (ROP) plan SIP and the associated 2002 and 2005 motor vehicle emission budgets for the severe nonattainment area, and a modification to one of the February 8, 2000 commitments, that were submitted for approval via parallel processing on June 4, 2001. The modified commitment is a commitment to perform a mid-course review of the attainment status of the 1-hour ozone severe nonattainment area and the Greater Connecticut serious area by December 31, 2004, instead of by December 31, 2003 as previously committed to. We are also proposing approval of a reasonably available control measure (RACM) analysis submitted by the state. This RACM analysis was submitted for approval via parallel processing on August 2, 2001.

DATES: Comments must be received on or before September 10, 2001.

ADDRESSES: Written comments (in duplicate if possible) should be sent to: David B. Conroy at the EPA Region I (New England) Office, One Congress Street, Suite 1100–CAQ, Boston, Massachusetts 02114–2023. Copies of the State submittals and EPA's Technical Support Document (TSD) for this proposed rule, and other relevant materials are available for public inspection during normal business hours at the following address: U.S. Environmental Protection Agency, Region 1 (New England), One Congress St., 11th Floor, Boston, Massachusetts, telephone (617) 918–1664, and at the Bureau of Air Management, Department of Environmental Protection, State Office Building, 79 Elm Street, Hartford, CT 06106, telephone (860) 424–3027. Please telephone in advance before visiting.

FOR FURTHER INFORMATION CONTACT: Richard P. Burkhart (617) 918–1664.

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

This supplemental information section is organized in the following order:

I. Background

A. Basis for Connecticut's Attainment Demonstration SIP.
1. What are the relevant Clean Air Act requirements?
2. What is the history of the state attainment demonstration SIP?
3. What is the time frame for taking action on the attainment demonstration SIP?

B. Background for the Connecticut Submittals and EPA Rulemaking.

C. What is the Status of Connecticut SIP Elements Not Fully Approved at the Time of the December 1999 Proposed Rulemaking?

D. What is EPA Proposing For Approval In This Action?

II. The Connecticut One Hour Ozone Attainment Demonstration for the NY-NJ-CT Area

A. Motor vehicle emission budgets for both VOC and NO_X.

B. Enforceable Commitments to Adopt Additional Control Measures.
C. Mid-Course Review.

III. Connecticut's Post-1999 ROP Plan

A. What is a post-1999 ROP plan, and why was Connecticut required to prepare one?
B. What action is EPA taking on this plan?
C. Were any changes made to Connecticut's base year inventory and prior target levels?
D. How did Connecticut account for changes in emissions due to growth?
E. What emission levels must Connecticut achieve by 2002, 2005, and 2007?
F. To what extent do Connecticut's plans reduce ozone precursor emissions?
G. How will Connecticut achieve these emission reductions?
1. NO_X Budget Program
2. Municipal Waste Combustor (MWC) Emission Limits
3. On-road Mobile Source Control Programs
4. Federal Non-road Control Programs
H. Will these emission reductions improve air quality in Connecticut?
I. Has Connecticut met its contingency measure obligation?
J. Are transportation conformity budgets contained in these plans?
K. Will any modifications be made to Connecticut's plan?

IV. Reasonably Available Control Measure (RACM) Analysis

A. What are the requirements for RACM Technology?
B. What did Connecticut submit?
C. How does the state analysis address the RACM requirement?
1. Consideration and Implementation of Transportation Control Measures (TCMs).
2. Stationary Source and Area Sources RACM Analysis
D. Does the Connecticut Attainment Demonstration Submittal meet the RACM requirement?

V. Proposed Action

VI. Administrative Requirements

I. Background

A. Basis for Connecticut's Attainment Demonstration SIP

1. What Are the Relevant Clean Air Act Requirements?

The Clean Air Act (Act or CAA) requires EPA to establish National Ambient Air Quality Standards (NAAQS) for certain widespread pollutants that cause or contribute to air pollution that is reasonably anticipated to endanger public health or welfare. In 1979, EPA promulgated the one-hour ground-level ozone standard of 0.12 parts per million (ppm) (120 parts per billion [ppb]). 44 FR 8202 (February 8, 1979).

Ground-level ozone is not emitted directly by sources. Rather, volatile organic compounds (VOC) and oxides of nitrogen (NO_X) which are emitted by a wide variety of sources, react in the presence of sunlight to form ground-level ozone. NO_X and VOC are referred to as precursors of ozone.

An area exceeds the one-hour ozone standard each time an ambient air quality monitor records a one-hour average ozone concentration above 0.124 ppm in any given day (only the highest one-hour ozone concentration at the monitor during any 24-hour day is considered when determining the number of exceedance days.) An area violates the ozone standard if, over a consecutive three-year period, more than three days of exceedances occur at any monitor in the area or in its immediate downwind environs.

The highest of the fourth-highest daily peak ozone concentrations over the three-year period at any monitoring site in the area is called the ozone design value for the area. Section 107(d)(4) of the Act, as amended in 1990, required EPA to designate as nonattainment any area that was violating the one-hour ozone standard, generally based on air quality monitoring data from the 1987 through 1989 period. Section 107(d)(4); 56 FR 56694 (November 6, 1991). The Act further classified these areas, based on the area's ozone design values, as marginal, moderate, serious, severe, or extreme. Marginal areas were suffering the least significant ozone nonattainment problems, while the areas classified as severe and extreme had the most significant ozone nonattainment problems.

The control requirements and date by which attainment is to be achieved vary with an area's classification. Marginal areas were subject to the fewest mandated control requirements and had the earliest attainment date, November 15, 1993. Severe and extreme areas are subject to more stringent planning requirements but are provided more time to attain the standard. Serious areas were required to attain the one-hour standard by November 15, 1999, and severe areas are required to attain by November 15, 2005 or November 15, 2007, depending on the areas' ozone design values for 1987 through 1989. The New York-Northern New Jersey-Long Island (NY–NJ–CT) nonattainment area is classified as severe and its attainment date is November 15, 2007. The New York-Northern New Jersey-Long Island nonattainment area includes the portions of northern New Jersey, the New York city metropolitan area and Long Island, and a portion of southwestern Connecticut. The attainment demonstration submitted by the Connecticut DEP addresses the Connecticut portion of the nonattainment area.

An attainment demonstration SIP includes a modeling analysis component showing how the area will achieve the standard by its attainment date and the control measures necessary to achieve those reductions. Section 172(c)(6) of the Act requires SIPs to include enforceable emission limitations, and such other control measures, means or techniques as well as schedules and timetables for compliance, as may be necessary to provide for attainment by the applicable attainment date. Section 172(c)(1) requires the implementation of all reasonably available control measures (including Reasonably Available Control Technology [RACT]) and requires the SIP to provide for attainment of the NAAQS. Section 182(b)(1)(A) requires the SIP to provide for specific annual reductions in emissions of VOC and NO_X as necessary to attain the ozone NAAQS by the applicable attainment date. Finally, section 182(j)(1)(B) requires the use of photochemical grid modeling or other methods judged to be at least as effective to demonstrate attainment of the ozone NAAQS in multi-state ozone nonattainment areas. As part of today's proposal, EPA is proposing action on the attainment demonstration SIP revisions submitted by Connecticut for the Connecticut portion of the New York-Northern New Jersey-Long Island severe ozone nonattainment area.

The attainment demonstration SIPs must also include motor vehicle emission budgets for transportation conformity purposes. Transportation conformity is a process for ensuring that states consider the effects of emissions associated with federally-funded transportation activities on attainment of the standard. Attainment demonstrations must include the estimates of motor vehicle VOC and NO_X emissions that are consistent with attainment, which then act as a budget or ceiling for the purpose of determining whether transportation plans, programs, and projects conform to the attainment SIP.

2. What Is the History of the State Attainment Demonstration SIP?

Notwithstanding significant efforts by the states, in 1995 EPA recognized that many states in the eastern half of the United states could not meet the November 1994 time frame for submitting an attainment demonstration SIP because emissions of NO_X and VOC in upwind states (and the ozone formed by these emissions) affected these nonattainment areas and the full impact

of this effect had not yet been determined. This phenomenon is called ozone transport.

On March 2, 1995, Mary D. Nichols, EPA's then Assistant Administrator for Air and Radiation, issued a memorandum to EPA's Regional Administrators acknowledging the efforts made by the states but noting the remaining difficulties in making attainment demonstration SIP submittals.[1] Recognizing the problems created by ozone transport, the March 2, 1995 memorandum called for a collaborative process among the states in the eastern half of the Country to evaluate and address transport of ozone and its precursors. This memorandum led to the formation of the Ozone Transport Assessment Group (OTAG)[2] and provided for the states to submit the attainment demonstration SIPs based on the expected time frames for OTAG to complete its evaluation of ozone transport.

In June 1997, OTAG concluded and provided EPA with recommendations regarding ozone transport. The OTAG generally concluded that transport of ozone and the precursor NO_X is significant and should be reduced regionally to enable states in the eastern half of the country to attain the ozone NAAQS. Building on the OTAG recommendations and technical analyses, in November 1997, EPA proposed action addressing the ozone transport problem. In its proposal, the EPA found that current SIPs in 22 states and the District of Columbia (23 jurisdictions) were insufficient to provide for attainment and maintenance of the one-hour standard because they did not regulate emissions that significantly contribute to ozone transport. 62 FR 60318 (November 7, 1997). The EPA finalized that rule in September 1998, calling on the 23 jurisdictions to revise their SIPs to require NO_X emission reductions within each state to a level consistent with a NO_X emissions budget identified in the final rule. 63 FR 57356 (October 27, 1998). This final rule is commonly referred to as the SIP Call.[3]

In recognition of the length of the OTAG process, in a December 29, 1997 memorandum, Richard Wilson, EPA's then Acting Administrator for Air and Radiation, provided until April 1998 for states to submit the following elements of their attainment demonstration SIPs for serious and higher classified nonattainment areas: (1) Evidence that the applicable control strategy measures in Title I, Part D, Subpart 2 of the Act, were adopted and implemented or were on an expeditious course to being adopted and implemented; (2) a list of measures needed to meet the remaining ROP emissions reduction requirement and to reach attainment; (3) for severe areas only, a commitment to adopt and submit, by the end of 2000, target calculations for post-1999 ROP and the control measures necessary for attainment and ROP plans through the attainment year; (4) a commitment to implement the SIP control programs in a timely manner and to meet ROP emissions reductions and attainment; and (5) evidence of a public hearing on the state submittal.

Connecticut submitted the required elements on September 16, 1998. EPA published a rulemaking on December 16, 1999 (64 FR 70348), which proposed approval of the September 1998 submittal conditioned on the state submitting some additional material. We identified the following items in the December 16, 1999 rulemaking as conditions upon which we would base our final approval: (1) Motor vehicle emission budgets for both VOC and NO_X; (2) control measures necessary to meet the ROP requirement from 1999 to the attainment year of 2007, including target calculations; (3) a commitment to submit additional control measures to make up for the projected need for additional controls to ensure attainment of the one-hour ozone standard by November 2007; and (4) a commitment to perform a mid-course review.

3. What Is the Time Frame for Taking Action on the Attainment Demonstration SIP?

As a result of a settlement agreement with the Natural Resources Defense Council, for various severe one-hour ozone nonattainment area attainment demonstrations that have not been fully approved by October 15, 2001, EPA must propose a full attainment demonstration Federal Implementation Plan (FIP) by that date. If the attainment demonstration has not been fully approved by June 14, 2002, EPA must finalize the FIP by that date. EPA is working with the state of Connecticut on issues identified in this proposal. If those issues can be resolved satisfactorily, EPA will proceed with finalizing a full approval of the attainment demonstration submittal by October 15, 2001, thus eliminating our obligation to propose or promulgate a FIP.

B. Background for the Connecticut Submittals and EPA Rulemaking

On September 16, 1998, the CT DEP submitted a one-hour ozone attainment demonstration for the Connecticut portion of the NY–NJ–CT area to EPA as a revision to the State's SIP. We proposed conditional approval of the plan in a notice published in the **Federal Register** on December 16, 1999 (64 FR 70348). EPA's proposed conditional approval was based on Connecticut's commitment to submit, by December 2000, rate-of-progress (ROP) target calculations for ROP after 1999 and the adopted measures to achieve post-1999 ROP. On June 4, 2001, the CT DEP submitted its proposed post-1999 ROP for its severe nonattainment area. CT DEP has asked that EPA approve the ROP plan via parallel processing, which is a mechanism whereby we propose action on the SIP revisions concurrent with the State's public hearing process. Connecticut held a public hearing seeking comment on the post-1999 ROP plan on July 10, 2001.

In the December 16, 1999 proposed rulemaking, EPA proposed, in the alternative, to disapprove the attainment demonstration if Connecticut did not submit an adequate motor vehicle emissions budget and a commitment to adopt and submit additional control measures to make up for the projected need for additional controls to ensure attainment of the one-hour ozone standard by November 2007. On February 8, 2000, the CT–DEP submitted revisions to the NY–NJ–CT attainment demonstration which contained 2007 motor vehicle emissions budgets for VOC and NO_X. On June 16, 2000, we published a document in the **Federal Register** announcing that these 2007 budgets are adequate for use in transportation conformity determinations (65 FR 37778).

The February 8, 2000 revisions to the NY–NJ–CT attainment demonstration also contained enforceable commitments for additional control measures to make up for the projected need for additional controls to ensure attainment of the one-hour ozone standard by November 2007. Specifically, Connecticut committed to: (1) Adopt and submit by December 31, 2000, additional NO_X limits applicable to municipal waste combustors (MWCs); (2) adopt and submit by October 31, 2001, additional necessary regional control measures to offset the emission reduction shortfall in order to attain the

[1] Memorandum, ''Ozone Attainment Demonstrations,'' issued March 2, 1995. A copy of the memorandum may be found on EPA's web site at http://www.epa.gov/ttn/oarpg/t1pgm.html.

[2] Letter from Mary A. Gade, Director, State of Illinois Environmental Protection Agency to Environmental Council of States (ECOS) Members, dated April 13, 1995.

[3] EPA is also requiring regional NO_X emission reductions under its authority in section 126 of the Act to assure that reductions occur in upwind areas that have been shown to impact attainment of the ozone standard in downwind areas.

one-hour ozone standard by November 2007; (3) adopt and submit by October 31, 2001, additional necessary intrastate control measures to offset the emission reduction shortfall in order to attain the one-hour ozone standard by November 2007; (4) submit revised 2007 emission budgets using the MOBILE 6 model within one year of the final release of that model; and (5) recalculate and submit revised motor vehicle emission budgets if additional motor vehicle control measures are adopted to address the shortfall in Connecticut.

With the submission of the SIP elements mentioned above, Connecticut has now submitted for approval all of the elements that were the basis of the proposed conditional approval of the attainment demonstration SIP. We now have all of the SIP elements necessary to justify a proposed full approval of the attainment demonstration. We therefore, will not finalize the December 16, 1999 proposed conditional approval, but rather propose full approval of it in this notice as modified by the additional submittals from the CT DEP. However, the State needs to complete its rulemaking process on the elements submitted for parallel processing before we may take final action approving the attainment demonstration. At the time we take final action we will respond to comments received on the December 16, 1999 proposed rulemaking in conjunction with comments received on today's proposed rulemaking.

C. What Is the Status of Connecticut SIP Elements Not Fully Approved at the Time of the December 1999 Proposed Rulemaking?

At the time of the December 16, 1999 proposed conditional approval, there were a number of SIP elements that Connecticut was relying on for attainment purposes but that had not yet been fully approved by EPA. In its December 1999 proposal, EPA said it intended to publish final rules for a number of SIP elements either before or at the same time as publication of final approval of the attainment demonstration. Table 1 below shows the measures Connecticut relied on in the attainment demonstration for the Connecticut portion of the NY–NJ–CT nonattainment area, including the shortfall measures, and their current approval status.

TABLE 1.—CONTROL MEASURES IN THE ONE-HOUR OZONE ATTAINMENT PLANS FOR THE CONNECTICUT SEVERE OZONE NONATTAINMENT AREA

Name of control measure	Type of measure	Approval status
On-board Refueling Vapor Recovery	Federal rule	Promulgated at 40 CFR 86.
Federal Motor Vehicle Control program	Federal rule	Promulgated at 40 CFR 86.
Federal Non-road Gasoline Engines	Federal rule	Promulgate at 40 CFR 90.
Federal Non-road Heavy Duty diesel engines	Federal rule	Promulgated at 40 CFR 89.
AIM Surface Coatings	Federal rule	Promulgated at 40 CFR 59 subpart D.
Consumer & commercial products	Federal rule	Promulgated at 40 CFR 59 subpart C.
Enhanced Inspection & Maintenance	CAA SIP Requirement	SIP approved (65 FR 64357; 10/27/00).
NO_X RACT	CAA SIP Requirement	SIP approved (62 FR 52016; 10/6/97).
VOC RACT pursuant to sections 182(a)(2)(A) and 182(b)(2)(B) of Clean Air Act.	CAA SIP Requirement	SIP approved (56 FR 52205; 10/18/91 and 64 FR 12019; 3/10/99).
VOC RACT pursuant to sections 182(b)(2)(A) and (C) of Clean Air Act.	CAA SIP Requirement	SIP approved (65 FR 62620; 10/19/00).
Stage II Vapor Recovery	CAA SIP Requirement	SIP approved (58 FR 65930; 10/17/93).
Stage I Vapor Recovery	CAA SIP Requirement	SIP approved (56 FR 52205; 10/18/91).
Reformulated Gasoline	CAA requried program in NYC and Hartford areas. Opt-in to federal program for remainder of state..	Promulgated statewide under 40 CFR section 80.70. also approved for opt-in portion of state as part of 15% plan (64 FR 12015; 3/10/99).
National Low Emission Vehicle (NLEV)	State opt-in	Federal program promulgated at 40 CFR 86 subpart R. Opt-in SIP approved (65 FR 12476; 3/9/00).
Clean Fuel Fleets	CAA SIP Requirement	RFG and I/M reductions substituted—SIP approved (65 FR 12474; 3/9/00).
15% VOC Reduction Plan	CAA SIP Requirement	SIP approved (64 FR 12015; 3/10/99).
Enhanced Rule Effectiveness	State measure	SIP approved (64 FR 12015; 3/10/99.
9% rate of progress plans	CAA SIP Requirement	SIP approved for the first phase from 1996–1999 (65 FR 62624; 10/19/00). Approval pending for the ROP plans post 1999.[4]
OTC NO_X MOU Phase II	State initiative	SIP approved (64 FR 52233; 9/28/99).
EPA NO_X SIP call	EPA requirement	SIP approved (65 FR 81743; 12/27/00).
Municipal Waste Combustor rule	State initiative	Approval pending.[5]
Regional or Local Control Measures	State initiative	Approval pending on an enforceable commitment to submit additional control measures.[6]

[4] In today's notice, EPA is proposing to approve Connecticut's post 1999 rate of progress plan for the New York-Northern New Jersey-Long Island severe ozone nonattainment area. EPA will take final action on the post-1999 ROP plan before or at the same time as it takes final action on the attainment demonstration.

[5] Connecticut adopted a regulation effective October 26, 2000 that reduces emissions of NO_X from MWCs below previously required levels. On June 4, 2001, Connecticut DEP asked EPA to approve this regulation via parallel processing. EPA will publish final rules for the MWC rule before or at the same time as it publishes final rules on the attainment demonstration.

[6] Connecticut submitted commitments to adopt and submit by October 31, 2001, all additional intrastate or regional control measures to offset the emission reduction shortfall in order to attain the one-hour ozone standard by November 2007. In today's notice, EPA is proposing to approve these commitments. EPA will take final action on these commitments at the same time as it takes final action on the attainment demonstration.

D. What Is EPA Proposing for Approval in This Action?

We are proposing full approval of SIP revisions that relate to attainment of the one-hour ozone standard in the Connecticut portion of the NY–NJ–CT severe area. The SIP revisions are Connecticut's one hour ozone attainment demonstration for the State's portion of the NY–NJ–CT severe area, various enforceable commitments, and the post-1999 ROP plan. Connecticut's one hour ozone attainment demonstration includes submitted 2007 motor vehicle emissions budgets, which are being proposed for approval. The enforceable commitments we are proposing to approve include: (1) A commitment to adopt and submit by October 31, 2001, additional necessary regional control measures to offset the emission reduction shortfall in order to attain the one-hour ozone standard by November 2007; (2) a commitment to adopt and submit by October 31, 2001, additional necessary intrastate control measures to offset the emission reduction shortfall in order to attain the one-hour ozone standard by November 2007; (3) a commitment to revise the attainment-level 2007 motor vehicle emissions budgets within one year of the date that EPA releases the final version of their motor vehicle emissions model, MOBILE6; (4) a commitment to recalculate and submit revised motor vehicle emissions budgets if any additional motor vehicle control measures are adopted to address the shortfall; and (5) a commitment to perform a mid-course review of the attainment status of the 1-hour ozone nonattainment area by December 31, 2004. Also, EPA is proposing to approve the motor vehicle emissions budgets for 2002 and 2005 contained in Connecticut's post-1999 ROP plan for transportation conformity purposes.

II. The Connecticut One Hour Ozone Attainment Demonstration for the NY–NJ–CT Area

This notice provides limited background information on the attainment demonstration SIP submitted by the CT DEP for the NY–NJ–CT severe ozone nonattainment area. More detail can be found in the proposed conditional approval notice published in the **Federal Register** on December 16, 1999 (64 FR 70348). EPA will respond to comments received on the December 16, 1999 proposed rulemaking in conjunction with comments received on today's proposed rulemaking.

EPA proposed to conditionally approve Connecticut's commitment to submit ROP target calculations for ROP after 1999 and the adopted measures to achieve post-1999 ROP by December 2000. EPA also proposed, in the alternative, to approve in part and disapprove in part the attainment demonstration if the State did not submit an adequate motor vehicle emissions budget consistent with attainment, and a commitment to the additional measures required for attainment of the standard. In the December 16, 1999 proposal, EPA suggested that Connecticut revise its commitment to provide for the Mid Course Review (MCR) to 2003. (It must be noted, that now, at our suggestion, Connecticut is committing to submit its MCR by December 31, 2004). The following explains how Connecticut has satisfied these requirements.

A. Motor Vehicle Emission Budgets for Both VOC and NO_X

On February 8, 2000, Connecticut DEP submitted an addendum to the ozone attainment demonstrations for both the Greater Connecticut serious ozone nonattainment area [7] and the Connecticut portion of the NY–NJ–CT severe ozone nonattainment area. The addendum was submitted in response to requirements EPA articulated as necessary for full approval in its proposed conditional approval rulemaking on the attainment demonstration SIP. A public hearing on the addendum was held by the Connecticut DEP on January 6, 2000.

The February 8, 2000 submittal contained 2007 VOC and NO_X motor vehicle emissions budgets for the Connecticut portion of the NY–NJ–CT severe nonattainment area. The motor vehicle emissions budgets were calculated to be consistent with requirements Connecticut is relying on in its attainment demonstration for the Connecticut portion of the NY–NJ–CT area. Connecticut also incorporated credit for the Tier 2/sulfur program in calculating the emissions budgets consistent with the issued November 8, 1999 memorandum entitled ''1-Hour Ozone Attainment Demonstrations and Tier 2/Sulfur Rulemaking'' from Lydia Wegman, Office of Air Quality Planning and Standards and Merrylin Zaw-Mon, Office of Mobile Sources. The motor vehicle emissions budgets for 2007 for VOC and NO_X submitted by Connecticut are shown in Table 2.

TABLE 2.—2007 TRANSPORTATION CONFORMITY BUDGETS

One-hour Ozone Nonattainment Area	VOC (tons/day)	NO_X (tons/day)
Connecticut portion of the New York-Northern New Jersey-Long Island severe area	9.7	23.7

EPA sent a letter to Connecticut DEP on May 31, 2000 finding these budgets adequate for use in transportation conformity determinations. Our adequacy determination was made subsequent to EPA offering an opportunity for public comment on the Connecticut budgets and addressing all relevant comments received. The public comment period began on these budgets when they were posted on EPA's web site at www.epa.gov/oms/transp/conform/currsips.htm. The public comment period began on February 14, 2000, and closed on March 20, 2000, and no public comments were received by EPA during this period. EPA did receive comments that opposed EPA determining adequate the budgets submitted by Connecticut for transportation conformity purposes during the original comment period on the proposed approval of the attainment demonstration for the Connecticut portion of the NY–NJ–CT area. EPA responded to all of those comments before determining the 2007 budgets adequate. A copy of the response to comments is available at http://www.epa.gov/otaq/transp/conform/reg1sips.htm.

On June 16, 2000 (65 FR 37778), EPA notified the public that we had found the 2007 VOC and NO_X motor vehicle emission budgets submitted by Connecticut on February 8, 2000 adequate for conformity purposes. These budgets became effective on July 3, 2000, and satisfied Connecticut's

[7] The attainment demonstration for Greater Connecticut serious ozone nonattainment area, including the February 8, 2000 addendum as it pertained to the Greater Connecticut nonattainment area, was approved by EPA on January 3, 2001 (66 FR 633).

need to submit adequate motor vehicle budgets consistent with attainment.

In the February 8, 2000 addendum to the attainment demonstration for the Connecticut portion of the NY–NJ–CT severe ozone nonattainment area, Connecticut also included, as required by EPA, two commitments that pertain to the motor vehicle emission budgets. The first is a commitment to revise the attainment-level 2007 motor vehicle emissions budgets within one year of the date that EPA releases the final version of their motor vehicle emissions model, MOBILE6. The second is a commitment to recalculate and submit revised motor vehicle emissions budgets if any additional motor vehicle control measures are adopted to address the shortfall. These commitments are consistent with conditions EPA articulated in its December 16, 1999 proposed conditional approval.

B. Enforceable Commitments To Adopt Additional Control Measures

In our December 16, 1999 proposed conditional approval ozone attainment demonstration, EPA said it did not believe the attainment analysis for NY–NJ–CT area proves attainment by the year 2007. An analysis EPA did to further determine how much additional reduction is needed in order for EPA to approve a revised and re-submitted attainment demonstration for this area showed an ozone shortfall of 5 ppb for the NY–NJ–CT severe nonattainment. In other words, our analysis predicts that the NY–NJ–CT area would remain 5 ppb over the NAAQS if Connecticut and its neighbors do not achieve further emission redactions. From this 5 ppb shortfall value we developed additional local emission reduction targets, and we recommended that at a minimum an additional 3.8% VOC and 0.3% NO_X reduction from base year 1990 inventories would be necessary to approve a revised and re-submitted attainment demonstration for this area. These additional reductions were to be over and above the CAA measures required for this area and the measures already relied on in the demonstration of attainment. Additionally, since reductions from EPA's Tier 2 tailpipe and low sulfur-in-fuel standards were already included in the EPA analysis, the percent reduction figures were also over and above Tier 2/Sulfur reductions as well. EPA directed the three states within the nonattainment area to work together to achieve these reductions.

In the February 8, 2000 addendum to the attainment demonstration for the Connecticut portion of the NY–NJ–CT severe ozone nonattainment area, Connecticut included enforceable commitments to submit control measures for additional emission reductions to make-up for the shortfall outlined in EPA's December 16, 1999 proposed conditional approval. Connecticut originally calculated the shortfall in emission reductions that it was responsible for as 4.9 tons per summer day (TPSD) of VOC and 0.4 TPSD of NO_X based on 1990 base year inventories in the Connecticut portion of the nonattainment area. In Connecticut's February 8, 2000 submittal, the CT DEP committed to adopt additional control measures to achieve these amounts. Specifically, Connecticut committed to: (1) Adopt and submit by December 31, 2000, additional NO_X limits applicable to municipal waste combustors (MWCs); (2) adopt and submit by October 31, 2001, additional necessary regional control measures to offset the emission reduction shortfall in order to attain the one-hour ozone standard by November 2007; and (3) adopt and submit by October 31, 2001, additional necessary intrastate control measures to offset the emission reduction shortfall in order to attain the one-hour ozone standard by November 2007.

In its June 4, 2001 submittal to EPA, Connecticut DEP asked EPA to approve via parallel processing the regulation it adopted, effective October 26, 2000, that reduces emissions of NO_X from Municipal Waste Combustors (MWC) below previously required levels. In a separate action, EPA will be proposing action on this rule. Because the State has now submitted the MWC rule, we will not take action on the February 8, 2000 commitment regarding the MWC rule; instead, we will take final action on the MWC rule before or at the same time we take final action on the attainment demonstration.

In its June 4, 2001 post-1999 rate of progress plan, Connecticut recalculated the mobile source portions of its 1990 base year inventory in order to use more accurate emission estimation methodologies that have recently become available. For the on-road sector, Connecticut re-calculated emissions using MOBILE 5b inputs consistent with those documented in the State's February, 2000 amendment to its ozone attainment demonstration SIP. This caused emissions to increase primarily because of an adjustment that reflects a greater proportion of VMT by light duty trucks (e.g., sport utility vehicles and pick up trucks.) For off-road engines, Connecticut used EPA's Non-road model. Although this new model has not yet been finalized, it provides a better estimate of emissions from this sector than the previous methodology. As a result of these recalculations, the shortfall in emission reductions for the Connecticut portion of the nonattainment area is now projected to be 5.3 tpsd of VOC and 0.5 tpsd of NO_X. It is these revised emission levels that Connecticut is committing to address through the adoption of additional control measures. In today's action, EPA is proposing to approve the enforceable commitments submitted by Connecticut DEP to address the shortfall remaining after the reduction achieved by its MWC rule. The MWC rule has been adopted by the CT DEP (see section G. 2 above). In a June 4, 2001 submittal to EPA, Connecticut articulated that it has narrowed its list of possible control measures for filling the shortfall. Those measures include the model rules developed by the Ozone Transport Commission (OTC). The model rules include measures to reduce VOC from consumer products, portable fuel containers, architectural and industrial maintenance (AIM) coatings, mobile equipment refinishing and repair operations, and solvent cleaning operations. They also include additional NO_X controls for fuel combustion sources, including gas turbines, stationary reciprocating engines, and industrial boilers. Connecticut has submitted a draft rule on mobile equipment refinishing and repair operations. A hearing is scheduled for September 15, 2001.

C. Mid-Course Review

A mid-course review (MCR) is a reassessment of modeling analyses and more recent monitored data to determine if a prescribed control strategy is resulting in emission reductions and air quality improvements needed to attain the ambient air quality standard for ozone as expeditiously as practicable but no later than the statutory dates.

EPA believes that a commitment to perform a MCR is a critical element of the weight of evidence (WOE) analysis for the attainment demonstration on which EPA proposed action in December 1999. In order to approve the attainment demonstration SIP for the Connecticut portion of the New York city area, EPA believes that the State must have an enforceable commitment to perform a MCR.

Originally, the Connecticut DEP submitted an enforceable commitment with its attainment demonstration on September 16, 1998. The commitment made was to submit a MCR in the 2001/2002 time frame and an additional MCR in 2005. In our December 16, 1999 proposed conditional approval, EPA suggested that Connecticut revise its

commitment to provide for the MCR immediately following the 2003 ozone season, so that the MCR would reflect regional NO_X reductions that were scheduled to occur by May 1, 2003 under the NO_X SIP call. Connecticut included this commitment in its February 8, 2000 submittal. In the summer of 2000, the Court of Appeals for the DC Circuit in effect extended the May 2003 compliance date for the SIP call until May 2004. Thus, consistent with more recent advice from us, and with the original intent that the MCR reflect the SIP call reductions, Connecticut has proposed to revise the date of submittal of the mid-course review from December 31, 2003 to December 31, 2004. In its June 4, 2001 submittal, Connecticut asks EPA to parallel process this revision to its commitment to do a mid-course review. This SIP revision is for both the Connecticut portion of the NY-NJ-CT severe nonattainment area and the Greater Connecticut area. This proposed date is now in-line with the EPA recommendation for submittal of the mid-course review on the attainment demonstration.

III. Connecticut's Post-1999 ROP Plan

A. What Is a Post-1999 ROP Plan, and Why Was Connecticut Required To Prepare One?

A post-1999 ROP, or rate-of-progress plan, illustrates how an ozone nonattainment area will make emission reductions of a set amount over a given period of time. The CAA requires states containing the highest classified ozone nonattainment areas—those classified as serious, severe, or extreme, to submit SIPs providing for periodic reductions in ozone precursors of a rate of 9% averaged over every three year period, beginning after 1996 and ending with the area's attainment date. CAA section 182(c)(2)(B). These SIP submissions are referred to as Rate-of-Progress, or ROP, plans. There are two ozone nonattainment areas in Connecticut, the Greater Hartford serious area and the Connecticut portion of the NY–NJ–CT severe area. Connecticut was, therefore, subject to the ROP plan requirements of CAA section 182(c)(2)(B).

EPA approved Connecticut's ROP plans that covered the 1996 to 1999 time period in a **Federal Register** notice dated October 19, 2000 (65 FR 62624). There are no further ROP requirements for the Greater Hartford serious area because section 181(a) of the CAA established November 15, 1999 as the attainment date for serious areas. Section 181(a) of the CAA established November 15, 2007 as the attainment date for severe areas that had a 1988 ozone design value between 0.190 and 0.280 parts per million. The NY–NJ–CT area was one such area, and therefore ROP emission reductions must be demonstrated for this area until 2007. Since Connecticut did not enter into a multi-state agreement with New York and New Jersey to develop a region wide plan for this area, Connecticut's post-1999 ROP plan only accounts for emission reductions from within its portion of the NY–NJ–CT severe area.

On March 2, 1995, EPA Assistant Administrator Mary D. Nichols sent a memorandum to EPA Regional Administrators recognizing the efforts made by states and the remaining difficulties in making the ROP and Attainment Demonstration SIP submittals. As an administrative remedial matter, the March 2, 1995 memorandum indicated that EPA would establish new time frames for certain SIP submittals. One such SIP submittal for which a new time frame was established was the post-1999 ROP plan. The March 2, 1995 Memorandum stated that Post-1999 ROP plans, along with other SIP elements, were to be submitted as part of a ''Phase II'' submittal by the end of 1999. Although Connecticut did not meet that deadline, it did submit a draft version of the plan to EPA shortly thereafter, and as discussed in this document the plan meets EPA's approval requirements for post-1999 ROP plans.

Connecticut submitted a pre-hearing draft post-1999 ROP plan to EPA on April 11, 2001. The State submitted its draft for public hearing to EPA on June 4, 2001, and requested that EPA parallel process the revision. The State held a public hearing on these ROP plans on July 10, 2001.

The reductions required by section 182 (c)(2)(C) must be calculated from a 1990 baseline, and the plan must describe how any growth in emissions over each applicable 3 year period will be offset. Under section 182(c)(2)(C) of the CAA, NO_X reductions can also be used to meet this emission reduction obligation. Available modeling indicates that NO_X emission reductions are clearly beneficial in Connecticut, and so, as outlined in EPA's December, 1993 NO_X substitution guidance, use of NO_X emission reductions to meet post-1996 emission reduction obligations is appropriate in the State.

The manner in which States are to determine the required level of emission reductions is described in an EPA guidance document entitled, ''Guidance on the Post-1996 Rate-of-Progress Plan and the Attainment Demonstration'' (EPA 452–93–015.) The calculation procedure is similar to the one used to determine prior ROP obligations in Connecticut.

B. What Action Is EPA Taking on This Plan?

We are proposing approval of the post-1999 ROP emission reduction plan submitted by the State of Connecticut for the State's portion of the NY–NJ–CT severe ozone nonattainment area, which is a multi-state ozone nonattainment area, as a revision to Connecticut's SIP. Connecticut did not enter into an agreement with New York and New Jersey to do a multi-state ROP plan, and therefore submitted a plan to reduce emissions only in the Connecticut portion of this area. EPA is proposing action today only on the Connecticut portion of the NY–NJ–CT post-1999 plan.

The post-1999 ROP plan documents how Connecticut complied with the provisions of section 182 (c)(2) of the Act. These sections of the Act require states containing certain ozone nonattainment areas develop strategies to reduce emissions of the pollutants that react to form ground level ozone.

C. Were Any Changes Made to Connecticut's Base Year Inventory and Prior Target Levels?

Before deriving its post-1999 emission target levels, Connecticut recalculated the mobile source portions of its 1990 base year inventory in order to use more accurate emission estimation methodologies that have recently become available. Connecticut chose to use new, more accurate emission estimation methodologies for the on-road and off-road source categories in the establishment of its post-1999 ROP emission target levels. For the on-road sector, Connecticut re-calculated emissions using MOBILE 5b inputs consistent with those documented in the State's February, 2000 amendment to its ozone attainment demonstration SIP. This caused emissions to increase primarily because of an adjustment that reflects a greater proportion of VMT by light duty trucks (e.g., sport utility vehicles and pick up trucks.) For off-road engines, Connecticut used EPA's Non-road model. Although this new model has not yet been finalized, it provides a better estimate of emissions from this sector than the previous methodology. The new model improves upon methodologies contained in EPA's original non-road emissions estimates, which are contained in the document ''Non-road Engine and Vehicle Emission Study Report'' (Publication nos. EPA–21A–2001; EPA460/3–91–002). This report of emissions from non-road

engines is referred to as the 1991 ''NEVES'' study.

Since Connecticut desired to use these new emission estimation methodologies in its post-1999 ROP calculations, it had to recalculate its 1990 emission baseline for these source categories using these improved methodologies to ensure that no emission reduction credits were generated simply because of differences in emission estimation procedures in the base year and projected emission inventories. As a result of the change to the base year emission estimates, and because the post-1999 ROP emission target levels are calculated from the prior ROP emission target levels, Connecticut also re-calculated its 15 percent and post-1996 ROP emission target levels. This recalculation of the 1996 and 1999 emission target levels does not alter the previously approved emission targets for these years approved as part of the State's 15 percent ROP plan (64 FR 12015) and post-1996 ROP plan (65 FR 62624), as it is not EPA policy to require that States revise previously approved ROP plans due to changes in ever-evolving emission estimation methodology.

Table 3 below shows the State's original data, and the new estimates that are now being used due to the change to the emission estimation methodology for on-road and off-road sources.

TABLE 3.—ORIGINAL AND REVISED EMISSION LEVELS

	Original values (tons/day)		Revised values (tons/day)	
	VOC	NO_X	VOC	NO_X
1990 Rate-of-progress Inventory	126.1	116.9	144.0	132.7
1996 Emission Target Level	101.8	NA	116.5	NA
1999 Emission Target Level	93.0	104.0	108.9	116.3

D. How Did Connecticut Account for Changes in Emissions Due to Growth?

Connecticut projected future year emissions based primarily on the State's 1996 periodic emission inventory. The State revised the 1996 on-road and off-road emissions in the periodic inventory using the updated methodologies previously discussed. Doing this ensures that no emission reduction credit, or emission increases, are shown in the ROP demonstration simply due to differences in emission estimation methodology for these two source categories.

Connecticut obtained most industrial growth factors from statewide employment projections obtained from the State's Department of Labor. The State used VMT projections provided by the State's Department of Transportation to project on-road mobile emissions, gasoline storage and marketing emissions, and asphalt paving emissions. Connecticut relied on the growth factors contained in the draft NON–ROAD model to project emissions for that source category. Statewide projected population data supplied by the U.S. Census Bureau was used to project emissions for most of the area source categories. Connecticut did not project NO_X emission increases for EGUs and large non-utility EGU's due to the State's NO_X budget program; VOC emission increases were projected for these sources.

E. What Emission Levels Must Connecticut Achieve By 2002, 2005, and 2007?

Table 4 below contains a summary of the 2002, 2005 and 2007 ROP calculations as performed by Connecticut in its post-1999 plans. The emission target levels are shown in step 6 of Table 4. The emission targets represent the maximum amount of emissions that can be emitted given the requirement of section 182(c)(2)(B) of the Act that reductions in ozone precursors occur at a rate of 9% averaged over every three year period, beginning after 1996 and ending with the area's attainment date. The post-1999 ROP plan submitted by Connecticut indicates that the projected, controlled emissions shown in Step 7 of Table 4 are well below the target levels calculated for each milestone year.

TABLE 4.—SUMMARY OF THE 2002, 2005 AND 2007 ROP CALCULATIONS

Description	2002 VOC (tpsd)	2002 NO_X (tpsd)	2005 VOC (tpsd)	2005 NO_X (tpsd)	2007 VOC (tpsd)	2007 NO_X (tpsd)
Step 1—Calculate 1990 Base Year Inventory.	271.0	133.3	271.0	133.3	271.0	133.3
Step 2—Develop Rate-of-Progress Inventory (by subtracting biogenics and non-reactives).	−127.0 = 144.0	−0.6 = 132.7	−127.0 = 144.0	−0.6 = 132.7	−127.0 = 144.0	−0.6 = 132.7
Step 3—Develop Adjusted Base Year Inventory by subtracting non-creditable FMVCP/RVP rdxns. between 1990–1999.	−9.5 = 134.5	−12.1 = 120.7	−9.75 = 134.3	−12.36 = 120.4	−9.79 = 134.2	−12.5 = 120.3
Step 4—Calculate Required Reductions (sum of percent ROP rdxn. and FMVCP increment from prior milestone year to current milestone year.).	9% 12.10	0%	9% 12.08	0%	5.26% 7.06	0.74% 0.89
	FMVCP 0.73	FMVCP 1.15	FMVCP 0.23	FMVCP 0.30	FMVCP 0.04	FMVCP 0.10
Step 5—Calculate total expected reduction.	12.83	1.15	12.31	0.30	7.10	0.99
Step 6—Set Target Levels for 2002, 2005, and 2007.	108.88 − 12.83 =	116.33 − 115 =	96.05 − 12.31 =	115.18 − 0.30 =	83.74 − 7.10 =	114.88 − 0.99 =

TABLE 4.—SUMMARY OF THE 2002, 2005 AND 2007 ROP CALCULATIONS—Continued

Description	2002 VOC (tpsd)	2002 NO_X (tpsd)	2005 VOC (tpsd)	2005 NO_X (tpsd)	2007 VOC (tpsd)	2007 NO_X (tpsd)
Target level = previous milestone target minus required reductions. The 1999 targets are 108.88 for VOC, and 116.33 for NO_X.	96.05	115.18	83.74	114.88	76.63	113.89
Step 7—Projected, Controlled Emissions.	89	98.2	80.2	83.1	76.6	76.8

F. To What Extent do Connecticut's Plans Reduce Ozone Precursor Emissions?

Connecticut's post-1999 ROP plan indicates that ozone precursor emissions will be substantially reduced by 2007. Compared to 1996 emission levels, VOC emissions are expected to decline by 40.7 tpsd, which represents a 35% decrease. NO_X emissions are expected to decline by 39.1 tpsd, representing a 34% decrease in emissions from 1996.

G. How Will Connecticut Achieve These Emission Reductions?

The control strategy used to achieve the emission levels shown in step 7 of Table 4 couples the control strategy used in the State's 15 percent and post-1996 ROP plans with reductions from the measures described below.

1. NO_X Budget Program

In September of 1999, Connecticut submitted a NO_X emission control regulation to EPA that affects electric generating units and other large combustion sources. The citation for the regulation is 22a–174–22b; Post-2002 NO_X Budget Program, and it is codified in the Regulations of Connecticut State Agencies. The rule was adopted in response to the Ozone Transport Committee's phase III NO_X Memorandum of Understanding and the EPA's NO_X SIP call, which was published in the **Federal Register** on October 27, 1998 (63 FR 57356.) The State's rule establishes a Statewide NO_X budget, and establishes an allowance trading system. The NO_X emissions cap established by the rule begins in the 2003 ozone season, which runs from the beginning of May to the end of June. The State's submittal was approved by EPA as a SIP strengthening measure on December 27, 2000 (65 FR 81743).

The State's NO_X budget program establishes a Statewide budget cap of 4477 tons per ozone season beginning in 2003. This cap represents a 60% emission reduction from 1990 emission levels. In the State's portion of the NY–NJ–CT severe area, emissions from sources subject to the rule will be limited to 1720 tons per ozone season in emissions by 2003, compared to 5211 tons in 1990. On a typical summer day basis, the NO_X cap in the State's portion of the NY–NJ–CT area equals 11.2 tons per summer day (tpsd). In total, the State's NO_X emissions control program for large point sources, which consists of NO_X RACT, the OTC NO_X MOU, and the Post-2002 NO_X Budget Program, will reduce NO_X emissions from subject sources by 22. 8 tpsd by 2003 relative to 1990 levels in the State's portion of the NY–NJ–CT severe area. EPA proposes to approve the State's determination of emission reduction credits from its NO_X emission control program.

2. Municipal Waste Combustor (MWC) Emission Limits

MWCs in Connecticut are subject to the requirements of Section 22a–174–38 of the Regulations of Connecticut State Agencies. This regulation was recently revised, effective October 26, 2000, with, among other things, more stringent NO_X limits which MWC's must meet by May 1, 2003. Connecticut's post-1999 ROP SIP calculates that emissions from the one source subject to this rule located in the State's portion of the NY–NJ–CT area will realize a 0.76 tpsd emission reduction by 2003 relative to 1996 emission levels.[8] Connecticut requested that EPA parallel process section 22a–174–38 in a submittal to EPA on June 4, 2001. In a separate action, EPA will be proposing to approve this rule.

3. On-Road Mobile Source Control Programs

Connecticut used the MOBILE5b model and VMT estimates supplied by the Connecticut Department of Transportation (CT–DOT) to estimate emission reductions from a variety of on-road mobile source programs. In addition to the on-road controls EPA approved in the state's 15 percent ROP and post-1996 ROP plans, (reformulated gasoline, tier 1, enhanced I/M, and CT–LEV), the State calculated emission reductions from phase II of the reformulated gasoline program, reductions from the final cut-points for the States enhanced I/M program, reductions from the combined effect of tier II automobile standards and low-sulfur in gasoline requirements, and phase I controls on heavy duty diesel engines. These programs are discussed further below. Connecticut projects that on-road mobile emissions will decline as shown in Table 5 due to these emission control measures.

TABLE 5.—ON ROAD MOBILE EMISSIONS TREND (TPSD)

	1996	2002	2005	2007
VOC (tpsd)	30.5	15.2	11.4	9.7
NO_X (tpsd)	55.3	38.4	29	23.7

a. FMVCP Standards. Connecticut's projected, controlled on-road emission estimates include reductions from the federal ''tier 2'' emission standard program. EPA promulgated the final rule for this program on February 10, 2000 (65 FR 6698). The tier 2 standards affect sport utility vehicles (SUVs), minivans, and pick-up trucks, in

[8] Connecticut's MWC rule allows for emissions trading across the state to meet these NO_X limits. Connecticut will be submitting an explanation of the statewide NO_X reductions its MWC rule will achieve and how those reductions are consistent with its ROP plans.

addition to regular passenger vehicles. The requirements are phased in during 2004 to 2009. The success of the tier 2 program in achieving emission reductions is dependent on requirements that the petroleum industry lower the sulfur content of gasoline. Between 2004 to 2006, the sulfur content of gasoline must be reduced from approximately 300 ppm to 30 ppm. These lowered sulfur levels will allow proper functioning of the emission control systems implemented to meet the tier 2 standards.

b. Heavy Duty Engine Standards. On October 6, 2000 (65 FR 59895) EPA promulgated a final rule requiring emission reductions from on-road heavy duty engines. The rule's requirements include provisions that will reduce VOC and NO_X emissions from gasoline and diesel fueled vehicles beginning in the 2004 to 2005 time-frame.

c. Reformulated Gasoline Program. Section 211 of the CAA requires sale of reformulated gasoline in the NY–NJ–CT severe area and other areas. Connecticut claimed emission reduction credit from phase I of the program, which began in 1995, in its 15 percent ROP plan. Phase II of the reformulated gasoline program began in 2000, and reduces both NO_X and VOC emissions from on-road vehicles.

d. Enhanced Inspection and Maintenance Program. Section 182(c)(3) of the Act required Connecticut to adopt an enhanced vehicle emission inspection and maintenance (I&M) program. Connecticut began state-wide testing of motor vehicles at centralized facilities in January, 1998 using the ASM2525 procedure, which uses a treadmill to simulate travel at 25 mph at a 25% load. EPA approved the State's program in a final rule published in the **Federal Register** on October 27, 2000 (65 FR 64357.)

4. Federal Non-Road Control Programs

EPA has established emission standards for a variety of non-road engine categories that will reduce ozone precursor emissions over the time period covered by the Connecticut post-1999 ROP plans. These standards affect heavy duty compression ignition (diesel) engines, small non-road spark-ignition (gasoline) engines, large non-road gasoline engines, gasoline powered outboard and personal water-craft engines, commercial diesel marine engines, recreational stern-drive and inboard engines, and locomotives. Detailed information regarding each of these emission control programs is available on EPA's web-site at: www.epa.gov/otaq.

EPA has also created a non-road air emissions estimation model that can be used to calculate emissions from all non-road engines, except those used to power aircraft, locomotives, and large commercial marine vessels, for the present year and for past or future years. Although this model is not a final model, Connecticut DEP believes, and EPA agrees, that it provides a more accurate evaluation of air pollution emissions from non-road engines than the alternative emission estimation procedure available to the State, which consists of the aforementioned November 1991 NEVES study.

Table 6 illustrates the decline in non-road emissions Connecticut predicts will occur due to implementation of the various federal non-road engine controls. The estimates were derived from the draft non-road model, combined with individual emission estimates calculated for aircraft, commercial marine vessels (CMVs), and locomotives.

TABLE 6.—NON-ROAD EMISSIONS TREND

	1996	2002	2005	2007
VOC (tpsd)	40.4	29.6	24.0	21.7
NO_X (tpsd)	33.0	33.7	32.5	31.4

H. Will These Emission Reductions Improve Air Quality in Connecticut?

Ozone levels declined in Connecticut during the 1990's due in part to emission reductions achieved by the State's prior ROP plans. Ozone levels should continue to decline in the future in light of the substantial emission reductions documented in the State's post-1999 ROP plan, commitments to adopt additional measures for attainment as discussed elsewhere in this document, and pollution control measures implemented by States upwind of Connecticut.

I. Has Connecticut Met Its Contingency Measure Obligation?

Connecticut has met its contingency measure obligation by using surplus emission reductions generated by the control measures in its post-1999 ROP plan. Connecticut's contingency obligation was calculated as 3 percent of its adjusted 1990 NO_X base year inventory, which equals 3.6 tpsd. From Table 4, a comparison of the projected, controlled emission shown in step 7 with the emission targets shown in step 6 reveals that substantial surplus (beyond ROP) emission reductions exist for each milestone year that easily exceed the 3.6 tpsd contingency obligation. We are approving Connecticut's demonstration that it meets the contingency measure provision of section 182(c)(9) of the Act, which requires contingency measures for serious and above milestone failures.

Connecticut still must meet the contingency measure provision of section 172(c)(9) of the Act, which pertains to failure to attain the ozone standard by the required date, but EPA is not obligated to approve such measures prior to approving the attainment demonstration for the following reason. The EPA believes the contingency measure requirement of section 172(c)(9) is an independent requirement from the attainment demonstration requirements under sections 172(c)(1) and 182(c)(2)(A). The section 172(c)(9) contingency measure requirement addresses the event that an area fails to attain the ozone NAAQS by the attainment date established in the SIP and has no bearing on whether a state has submitted a SIP that projects attainment of the ozone NAAQS. The attainment SIP provides a demonstration that attainment ought to be reached, but the contingency measure SIP requirement of section 179(c)(9) concerns what is to happen only if attainment is not actually achieved. The EPA acknowledges that contingency measures are an independently required SIP revision, but does not believe that submission of contingency measures is necessary before EPA may approve an attainment SIP.

J. Are Transportation Conformity Budgets Contained in These Plans?

Transportation conformity is required by section 176(c) of the Clean Air Act, and EPA's transportation conformity rule requires that transportation plans, programs, and projects conform to state air quality implementation plans. Conformity to a SIP means that transportation activities will not

produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards. States are required to establish motor vehicle emissions budgets in any control strategy SIP that is submitted for attainment and maintenance of the national ambient air quality standards.

The June 4, 2001 post-1999 ROP plan submitted by Connecticut contained 2002, 2005 and 2007 budgets for nitrogen oxides (NO_X) and volatile organic compounds (VOCs) for the State's portion of the NY–NJ–CT severe area. Table 7 contains these NO_X and VOC transportation conformity budgets in units of tons per summer day:

TABLE 7.—CONFORMITY BUDGETS IN THE POST-1999 ROP PLAN

	2002	2005	2007
VOC (tpsd)	15.20	11.42	9.69
NO_X (tpsd)	38.39	29.01	23.68

The 2007 budgets contained in the Connecticut post-1999 ROP plan match the budgets in the State's attainment demonstration for this area that were submitted on February 15, 2000. EPA issued a letter on May 31, 2000, finding these budgets adequate for use in transportation conformity determinations and published an announcement in the **Federal Register** on June 16, 2000, (65 FR 37778). These budgets became effective on July 3, 2000.

The 2002 and 2005 budgets, on the other hand, are new budgets established by the post-1999 ROP plan. The criteria by which we determine whether a SIP's motor vehicle emissions budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). New budgets must go though EPA's process for determining the adequacy of SIP motor vehicle emission budgets as delineated in the EPA's May 14, 1999 memo titled ''Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision.''

In today's notice EPA is proposing to find the 2002 and 2005 budgets for VOC and NO_X submitted on June 4, 2001 in Connecticut's post 1999 rate of progress plan adequate for use in transportation conformity determinations. However, before making an affirmative adequacy finding, EPA must open a 30 day public comment period for all new mobile source vehicle emission budgets. Today's action opens the required 30 day comment period on the adequacy of these budgets, and the comment period will close September 10, 2001. During this comment period, the public can comment on the adequacy of the budgets and any other aspect of the SIP, by submitting comments to EPA as indicated in the **ADDRESSES** section of this proposal. After examining any comments received on the adequacy of the budgets, EPA will proceed to respond to those comments and will make a final decision on the adequacy of the budgets. EPA will publish a notice of adequacy within a reasonable time frame after the 30 day comment period closes.

As we proposed on July 28, 2000 (65 FR 46383), the attainment budgets that we are proposing to approve today would be effective for conformity purposes only until revised MOBILE6 attainment motor vehicle emissions budgets are submitted and we have found them adequate. The revised MOBILE6 attainment budgets will apply for conformity purposes as soon as we find them adequate.

We are limiting the duration of our approval in this manner because we are only approving the attainment demonstrations and their budgets because the States have committed to revise them with MOBILE6. Therefore, once we have confirmed that the revised MOBILE6 budgets are adequate, they will be more appropriate than the budgets we are proposing to approve for conformity purposes now.

EPA is also proposing approval of the 2002, 2005 and 2007 budgets for nitrogen oxides and volatile organic compounds for the State's portion of the NY–NJ–CT severe area.

K. Will Any Modifications Be Made to Connecticut's Plan?

It is possible that modifications will be made to the Connecticut post-1999 ROP plan pursuant to comments made during the public hearing for these SIP revisions, which was held July 10, 2001. Additionally, during the course of reviewing the State's draft plan we noted several minor adjustments that the State should make to the plan, and have been notified by the State that our requested revisions will be made to the final document submitted to EPA. The adjustments we are recommending will not cause the State's projected, controlled emissions to exceed any of the ROP milestones. Additionally, given the substantial amount of surplus emission reductions achieved by the State's post-1999 ROP plan we find it unlikely that any revisions made pursuant to the public hearing process would jeopardize Connecticut's demonstration that it can meet its 2002, 2005 and 2007 emission target levels. Our suggested changes to the Post-1999 ROP plan are contained in a July 10, 2001 letter to the CT DEP.

IV. Reasonably Available Control Measure (RACM) Analysis

A. What Are the Requirements for RACM Technology?

Section 172(c)(1) of the Act requires SIPs to contain RACM as necessary to provide for attainment as expeditiously as practicable. EPA has previously provided guidance interpreting the RACM requirements of section 172(c)(1). See 57 FR 13498, 13560. In that guidance, EPA stated that potentially available measures that would not advance the attainment date for an area would not be considered RACM. EPA also indicated in the guidance that states should consider all potentially available measures to determine whether they were reasonably available for implementation in the area, and whether they would advance the attainment date. Further, states should indicate in the SIP submittals whether the measures considered are reasonably available or not, and if the measures are reasonably available, they must be adopted as RACM. Finally, EPA indicated that states could reject potential RACM either because they would not advance the attainment date or would cause substantial widespread and long-term adverse impacts. States could also consider local conditions, such as economics or implementation concerns, in rejecting potential RACM. The EPA also issued a recent memorandum on this topic, ''Guidance on the Reasonably Available Control Measures (RACM) Requirement and Attainment Demonstration Submissions for Ozone Nonattainment Areas,'' John S. Seitz, Director, Office of Air Quality Planning and Standards, November 30, 1999.

B. What Did Connecticut Submit?

On August 2, 2001, the CT–DEP submitted the draft document, Reasonably Available Control Measures (RACM) Analysis for the Connecticut Portion of the NY–NJ–CT Severe Ozone Nonattainment Area, and requested that EPA parallel process it as a revision to the State's SIP. The document is in draft form, and comments on its content can be made directly to the CT–DEP using the address located in the **ADDRESSES** portion of this document, as well as to EPA in comments on this proposal.

C. How Does the State Analysis Address the RACM Requirement?

The Connecticut RACM analysis discusses the reasonableness and effectiveness of both additional transportation control measures and additional stationary source control measures. As explained below, the state concludes that there are no control measures, above and beyond what the state is already implementing, that would advance the Act's specified attainment date of 2007. Furthermore, the reductions from any potential additional RACM measures are very small compared to the ROP reductions that will be reached by 2007.

1. Consideration and Implementation of Transportation Control Measures (TCMs)

This section describes the analysis the state submitted to evaluate and implement available transportation control measures (TCMs) in the Connecticut portion of the NY–NJ–CT severe area. In Connecticut, the identification, evaluation, selection, and implementation of TCM's takes place as a regular component of the statewide transportation planning process. The Connecticut Department of Transportation (CT–DOT), in collaboration with the various urban and rural Regional Planning Organizations (RPO's) and other interested parties, produces annual updates to the Statewide Transportation Improvement Program (STIP), documenting projects to be funded under federal transportation programs for a three-year period. The STIP includes investments in various modes, such as transit, highways, and bicycle facilities. The most recent STIP, produced in July 2001, allocates about one-third of total funding for fiscal years 2001, 2002, 2003 ($790 million out of $2,455 million) to expand and maintain numerous rail, bus, rideshare, and other transit-related programs and projects.

One source of funding for TCM's contained in the STIP is the Congestion Mitigation and Air Quality (CMAQ) Program, as delineated in the federal Transportation Equity Act for the 21st Century (TEA–21). The CMAQ Program was established to address traffic congestion and vehicle emissions contributing to air quality nonattainment problems. CT–DOT works cooperatively with the RPO's, transit agencies, and State and local air quality agencies to identify and select appropriate projects for CMAQ funding. In 1999, state legislation was passed mandating that at least 70% of CMAQ funding received under TEA–21 be spent in the Southwest Connecticut severe ozone nonattainment area.

Section 108(f) of the Clean Air Act lists 16 potential types of TCM's. Connecticut's STIP includes measures from most of the Section 108(f) categories. For purposes of analyzing whether any additional TCMs exist in Connecticut that could be considered RACM, CT–DEP performed an analysis of the most significant existing TCMs in the STIP to quantify the magnitude of emission reductions they achieve. These TCMs included addition of 1,000 new parking spaces at a New Haven rail-stop, ride-share projects, incident management projects, the employee commute option program, and coordinated signal systems. The State determined that these measures would reduce VOC and NO_X emissions combined by approximately 0.44 tpsd, which is less than 1% of the total amount of emission reductions needed in the State's portion of the NY–NJ–CT severe area to reach attainment.

CT–DEP then analyzed the potential emission reductions that could be achieved from the following set of aggressive, hypothetical TCMs: a 12% reduction in the number of drive alone work trips, a 6.3% increase in the work at home rate, and a 4.5% increase in commuter rail use. The State determined that these aggressive measures would only achieve approximately 1.6 tpsd in emission reductions, which again is far less than the reductions needed for the area to reach attainment, which will be supplied by all of the measures in the submitted SIP, to be fully implemented in time to reach attainment by 2007. Therefore, CT–DEP concludes that even if these aggressive TCMs could be implemented, doing so would not allow the State to achieve the NAAQS sooner than 2007, when all other SIP measures will be in place, and therefore these measures are not considered RACM.

2. Stationary Source and Area Sources RACM Analysis

EPA provided the CT–DEP with an analysis of numerous potential stationary source RACM measures that could conceivably be considered RACM. For this analysis, EPA assumed that stationary source categories that have already been controlled nationally, regionally or locally in the SIP would not be effective candidates for additional controls that could be considered RACM, since these categories have only recently installed their level of control or are about to shortly. Source categories and their emissions were identified that would not be subject to control in 2007 after the other national, regional and SIP controls were accounted for. These source categories were then ranked on the basis of emissions by category. Based on this analysis, the CT DEP concluded, as described below, that these measures would either (a) likely require an intensive and costly effort for numerous small area sources, or (b) not advance the attainment date in the area. This conclusion is reached primarily because the reductions expected to be achieved by the potential RACM measures are relatively small, and are far less than the emissions reductions needed within the nonattainment areas to reach attainment.

a. Stationary Source NO_X RACM Analysis. From the analysis provided by EPA, CT–DEP observed that total emissions from the top 80% of the NO_X stationary source categories that will not be controlled in Connecticut in 2007 amount to only 8.2 tpsd. The kinds of source categories with the most emissions available for control (e.g., residential distillate oil and gas combustion; commercial/institutional gas combustion) generally affect area sources, which are smaller and numerous. Requiring NO_X control on these sources would therefore likely require an intensive, costly effort. All of the remaining uncontrolled source categories in 2007 have less than 1 tpsd in NO_X emissions, and thus would not provide sufficient emission reduction to advance the attainment date. As a result, controls on these categories are not considered reasonably available.

b. Stationary Source VOC RACM Analysis. Connecticut DEP's review of the analysis provided by EPA found that the State, via its long history of implementation of VOC control regulations, has already adopted rules that cover all of the VOC source categories with significant emissions. A review of the State's stationary source VOC inventory did not reveal any

source categories that could, through regulation, yield substantial emission reductions, with the possible exception of the Ozone Transport Commission (OTC) measures listed below.

The OTC has developed model rules for the following VOC source categories: architectural and industrial maintenance coatings, consumer products, portable fuel containers, mobile equipment repair and refinishing, and solvent cleaning. CT–DEP announced in its July 2001 draft SIP revision that it is evaluating the model rules to determine those that may be most appropriate for adaptation into Connecticut regulations. To assist with this effort, CT–DEP is soliciting public comment on each of the model rules. Comments are requested regarding the technical feasibility, cost, and air quality benefits of each rule. CT–DEP will provide additional opportunity for public comment on specific regulatory language that may be proposed in the future to implement any of these OTC model rules.

It is estimated that if all of the OTC's VOC model rules are adopted, VOC emissions could be reduced by approximately 10 tpsd in Fairfield county, which forms the majority of the Connecticut portion of the NY–NJ–CT severe area. CT–DEP already intends to adopt at least some of these rules to cover its VOC attainment demonstration shortfall addressed elsewhere in this document. The remaining available VOC reductions from these potential OTC rules, after Connecticut meets its shortfall commitment, would be far less than the reductions from existing SIP measures to be implemented by 2007 to reduce ozone levels in Connecticut to a level consistent with attainment, as illustrated in the zero-out modeling discussion below. Thus, Connecticut concluded that the implementation of additional OTC rules beyond those needed to fill the shortfall would not serve to advance attainment.

During the development of the attainment demonstration for Connecticut's portion of the NY–NJ–CT area, a modeling run was done where the 1999 projected emissions in Connecticut were zeroed out, while all other emissions and modeling inputs remained the same. This zero out run represented a reduction in Connecticut emissions of 493.9 tons per day of VOC, and 372.6 tons per day of NO_X. The affect of zeroing out Connecticut's anthropogenic emissions shows that this would have very little effect on both the magnitude and the geographical extent of maximum ozone concentrations within Connecticut. Approximately 95% of the state would experience reductions in peak ozone levels of less than 1 part per billion (ppb), on a scale where the air quality standard is 125 ppb, even with this substantial emission reduction. Therefore, CT–DEP concludes that the relatively small emission reductions available from the OTC's VOC model rules beyond those that Connecticut will be adopting to fill its shortfall are not RACM because they would not advance the area's attainment date. Nonetheless, Connecticut is considering adoption of the OTC measures into its SIP.

Within the Connecticut post-1999 rate-of-progress analysis, the State shows that between 2000 and 2007 VOC emissions will be reduced by 32.3 tpsd, and NO_X emissions by 39.5 tpsd. A significant portion of the substantial emission reductions documented in Connecticut's post-1999 ROP plan are due to the gradual vehicle and off-road equipment fleet turnover to newer technology between 2000 and 2007, and to the NO_X controls associated with the NO_X SIP Call, the requirements for which will be effective by 2003. Given the magnitude of the reductions from these programs expected between now and the State's 2007 attainment date, the state concludes that no further stationary or mobile source control measures beyond those considered in the attainment demonstration and those to be submitted to fill the shortfall could accelerate the state's attainment date to a time-frame earlier than 2007.

Connecticut's attainment demonstration documents the need for a reduction in emissions in upwind areas in order for the State to attain the one hour ozone standard by 2007. Although a large part of those reductions will occur in the 2003 to 2004 time-frame due to implementation of the NO_X SIP Call, additional upwind reductions will occur in the 2005 to 2007 time-frame as the above mentioned on-road and off-road mobile source fleet turnover reductions occur and local upwind controls are implemented. For example, in the New York and New Jersey portions of the NY–NJ–CT area, 13.5 tpsd of VOC emission reductions and 23.6 tpsd of NO_X reductions are projected to occur between 2005 and 2007. These and other upwind reductions will have a greater impact on improving air quality in Connecticut than the marginal amount of emission reductions the State could achieve by implementing additional potential RACM controls.

Additionally, the photochemical modeling accompanying the state submittal shows that ozone concentrations in Connecticut stem from both local and regional emissions. NO_X and VOC emissions in the Connecticut portion of the modeling domain represent a small portion of regional emissions and since the state has already implemented all emission control programs as required by the Act for severe areas, Connecticut believes based on the above analysis that there are no reasonable control measures available to the state that will accelerate attainment of the standard. This conclusion is supported by the zero out modeling run discussed above.

D. Does the Connecticut Attainment Demonstration Submittal Meet the RACM Requirement?

The EPA has reviewed the submitted attainment demonstration documentation, the process used by the control agencies to review and select TCMs, other possible reduction measures for point and area sources, and the emissions inventory for the Connecticut severe area. Although EPA encourages areas to implement available RACM measures as potentially cost effective methods to achieve emissions reductions in the short term, EPA does not believe that section 172(c)(1) requires implementation of potential RACM measures that either require costly implementation efforts or produce relatively small emissions reductions that will not be sufficient to allow the area to achieve attainment in advance of full implementation of all other required measures. This conclusion concerning further TCM's addresses only EPA's finding that they would not advance the ozone attainment date. There are many other reasons that an area might find it appropriate to implement TCMs, such as congestion mitigation or sprawl management.

The attainment demonstration for the Connecticut portion of the NY–NJ–CT severe nonattainment areas indicates that the ozone benefit expected from regional NO_X reductions is substantial. In addition, many of the measures designed to achieve emissions reductions from within the nonattainment area will not be fully implemented prior to the 2007 nonattainment date. Therefore, EPA concludes, based on the available documentation, that since the reductions from potential RACM measures do not nearly equate to the reductions needed to demonstrate attainment, none of the measures could advance the attainment date prior to full implementation of the SIP call and full implementation of the ROP measures, and thus there are no additional potential local measures that can be considered RACM for this area.

V. Proposed Action

We are proposing full approval of SIP revisions that relate to attainment of the one-hour ozone standard in the Connecticut portion of the NY–NJ–CT severe area. The SIP revisions are Connecticut's one hour ozone attainment demonstration for the State's portion of the NY–NJ–CT severe area, including various enforceable commitments and the post-1999 ROP plan. Connecticut's one hour ozone attainment demonstration includes 2007 motor vehicle emissions budgets, which are being proposed for approval. The enforceable commitments we are proposing to approve include: (1) A commitment to adopt and submit by October 31, 2001, additional necessary regional control measures to offset the emission reduction shortfall in order to attain the one-hour ozone standard by November, 2007; (2) a commitment to adopt and submit by October 31, 2001, additional necessary intrastate control measures to offset the emission reduction shortfall in order to attain the one-hour ozone standard by November, 2007; (3) a commitment to revise the attainment-level 2007 motor vehicle emissions budgets within one year of the date that EPA releases the final version of their motor vehicle emissions model, MOBILE6; (4) a commitment to recalculate and submit revised motor vehicle emissions budgets if any additional motor vehicle control measures are adopted to address the shortfall; and (5) a commitment to perform a mid-course review of the attainment status of the 1-hour ozone severe nonattainment area and the Greater Connecticut serious area by December 31, 2004. Also, EPA is proposing to approve the motor vehicle emissions budgets for 2002 and 2005 contained in Connecticut's post-1999 ROP plan for transportation conformity purposes.

EPA is soliciting public comments on the issues discussed in this notice. All comments will be considered before taking final action on the attainment demonstration, including ROP, for the Connecticut portion of the NY–NJ–CT nonattainment area. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA-New England office listed in the **ADDRESSES** section of this notice.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

VI. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely 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.*)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

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

Dated: August 3, 2001.

Ira W. Leighton,

Acting Regional Administrator, EPA-New England.

[FR Doc. 01–20142 Filed 8–9–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA179–0243b; FRL–7022–6]

Revisions to the California State Implementation Plan, Kern County Air Pollution Control District and Imperial County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Kern County Air Pollution Control District (KCAPCD) and the Imperial County Air Pollution Control District (ICAPCD) portion of the California State Implementation Plan (SIP). These revisions concern general

requirements for source sampling and continuous monitoring systems. We are proposing to approve local rules that address general requirements for source sampling and continuous monitoring systems under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by September 10, 2001.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814.

Kern County Air Pollution Control District, 2700 ''M'' Street, Suite 302, Bakersfield, CA 93301–2370.

Imperial County Air Pollution Control District, 150 South 9th Street, El Centro, CA 92243–2801.

FOR FURTHER INFORMATION CONTACT: Stanley Tong, Rulemaking Office (Air-4), U.S. Environmental Protection Agency, Region IX, (415) 744–1191.

SUPPLEMENTARY INFORMATION: This proposal addresses the following local rules: KCAPCD 108, KCAPCD 108.1, ICAPCD 109, and ICAPCD 110. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: July 17, 2001.

Jane Diamond,

Acting Regional Administrator, Region IX.

[FR Doc. 01–20138 Filed 8–9–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA101/178–4124b; FRL–7030–8]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; VOC and NO_X RACT Determinations for Five Individual Sources in the Pittsburgh-Beaver Valley Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revisions submitted by the Commonwealth of Pennsylvania for the purpose of establishing and requiring reasonably available control technology (RACT) for five major sources of volatile organic compounds (VOC) and nitrogen oxides (NO_X). These sources are located in the Pittsburgh-Beaver Valley ozone nonattainment area. In the Final Rules section of this **Federal Register**, EPA is approving the Commonwealth's SIP revisions as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. The 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. Please note that if adverse comment is received for a specific source or subset of sources covered by an amendment, section or paragraph of this rule, only that amendment, section, or paragraph for that source or subset of sources will be withdrawn.

DATES: Comments must be received in writing by September 10, 2001.

ADDRESSES: Written comments should be addressed to David L. Arnold, Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Pennsylvania Department of Environmental Resources Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105; and the Allegheny County Health Department, Bureau of Environmental Quality, Division of Air Quality, 301 39th Street, Pittsburgh, Pennsylvania 15201.

FOR FURTHER INFORMATION CONTACT: Catherine Magliocchetti at (215) 814–2174, or Ellen Wentworth at (215) 814–2034 at the EPA Region III address above or by e-mail at *magliocchetti.catherine@epa.gov.* or *wentworth.ellen@epa.gov.* Please note that while questions may be posed via telephone and e-mail, formal comments must be submitted, in writing, as indicated in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: August 3, 2001.

Thomas C. Voltaggio,

Deputy Regional Administrator, Region III.

[FR Doc. 01–20238 Filed 8–9–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA–4125b; FRL–7030–3]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; VOC RACT Determinations for Three Individual Sources in the Pittsburgh-Beaver Valley Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revisions submitted by the Commonwealth of Pennsylvania for the purpose of establishing and requiring reasonably available control technology (RACT) for three major sources of volatile organic compounds (VOC). These sources are located in the Pittsburgh-Beaver Valley ozone nonattainment area. In the Final Rules section of this **Federal Register**, EPA is approving the Commonwealth's SIP revisions as a direct final rule without

prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. The 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. Please note that if adverse comment is received for a specific source or subset of sources covered by an amendment, section or paragraph of this rule, only that amendment, section, or paragraph for that source or subset of sources will be withdrawn.

DATES: Comments must be received in writing by September 10, 2001.

ADDRESSES: Written comments should be addressed to David L. Arnold, Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; Allegheny County Health Department, Bureau of Environmental Quality, Division of Air Quality, 301 39th Street, Pittsburgh, Pennsylvania 15201 and the Pennsylvania Department of Environmental Resources Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Rose Quinto at (215) 814–2182, the EPA Region III address above or by e-mail at *quinto.rose@epa.gov.* Please note that while questions may be posed via telephone and e-mail, formal comments must be submitted, in writing, as indicated in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: August 3, 2001.

Thomas C. Voltaggio,

Deputy Regional Administrator, Region III.

[FR Doc. 01–20240 Filed 8–9–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA–4130b; FRL–7030–5]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; VOC and NO_X RACT Determinations for Four Individual Sources in the Pittsburgh-Beaver Valley Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revisions submitted by the Commonwealth of Pennsylvania for the purpose of establishing and requiring reasonably available control technology (RACT) for four major sources of volatile organic compounds (VOC) and nitrogen oxides (NO_X). These sources are located in the Pittsburgh-Beaver Valley ozone nonattainment area. In the Final Rules section of this **Federal Register**, EPA is approving the Commonwealth's SIP revisions as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. The 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. Please note that if adverse comment is received for a specific source or subset of sources covered by an amendment, section or paragraph of this rule, only that amendment, section, or paragraph for that source or subset of sources will be withdrawn.

DATES: Comments must be received in writing by September 10, 2001.

ADDRESSES: Written comments should be addressed to David L. Arnold, Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; Allegheny County Health Department, Bureau of Environmental Quality, Division of Air Quality, 301 39th Street, Pittsburgh, Pennsylvania 15201 and the Pennsylvania Department of Environmental Resources Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Rose Quinto at (215) 814–2182, the EPA Region III address above or by e-mail at *quinto.rose@epa.gov.* Please note that while questions may be posed via telephone and e-mail, formal comments must be submitted, in writing, as indicated in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: August 3, 2001.

Thomas C. Voltaggio,

Deputy Regional Administrator, Region III.

[FR Doc. 01–20242 Filed 8–9–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 81

[CA038–FOA; FRL –7031–9]

Clean Air Act Finding of Attainment and Alternative Finding of Nonattainment and Reclassification to Serious; California-Imperial Valley Planning Area; Particulate Matter of 10 microns or less (PM–10)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to find that the State of California has established to EPA's satisfaction that the Imperial Valley Planning Area (Imperial County), a PM–10 moderate nonattainment area, would have attained the national ambient air quality standards (NAAQS) for particulate matter of ten microns or less (PM–10) by the applicable Clean Air Act (CAA or the Act) attainment

date, December 31, 1994, but for emissions emanating from outside the United States, i.e., Mexico. If EPA takes final action on this proposed finding, Imperial County will not be subject to a finding of failure to attain and reclassification to serious.

Alternatively, EPA is proposing to find that Imperial County did not attain the PM–10 NAAQS by its CAA mandated attainment date. This proposed finding is based on monitored air quality data for the PM–10 NAAQS during the years 1992–1994. If EPA takes final action on this proposed finding, Imperial County will be reclassified by operation of law as a serious nonattainment area under section 188(b)(2)(A) of the CAA.

EPA is proposing the above actions in the alternative in the event that public comments convince EPA that the State has not established that Imperial County would have attained the PM–10 NAAQS but for international transport by the applicable attainment date.

DATES: Comments on this proposed rule must be received in writing by September 10, 2001.

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

FOR FURTHER INFORMATION CONTACT: Doris Lo, U.S. Environmental Protection Agency, Region 9, Air Division, Planning Office (AIR–2), 75 Hawthorne Street, San Francisco, California 94105, (415) 744–1287, lo.doris@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

A. CAA Provisions and EPA Actions Concerning Designation and Classification

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

States containing areas which were designated as moderate nonattainment by operation of law under section 107(d)(4)(B) were to develop and submit state implementation plans (SIPs) to provide for the attainment of the PM–10 NAAQS. Pursuant to section 189(a)(2), those SIP revisions were to be submitted to EPA by November 15, 1991.

B. CAA Provisions Concerning Reclassification to Serious Nonattainment

Pursuant to sections 179(c) and 188(b)(2) of the Act, EPA has the responsibility to determine within 6 months of the applicable attainment date, whether PM–10 nonattainment areas have attained the NAAQS. Section 179(c)(1) of the Act provides that these determinations are to be based upon an area's ''air quality as of the attainment date,'' and section 188(b)(2) is consistent with this provision. EPA makes the determinations of whether an area's air quality is meeting the PM–10 NAAQS based upon air quality data gathered at monitoring sites in the nonattainment area. These data are reviewed to determine the area's air quality status in accordance with EPA guidance at 40 CFR part 50, appendix K.

Pursuant to appendix K, attainment of the annual PM–10 standard is achieved when the annual arithmetic mean PM–10 concentration is equal to or less than 50 μg/m3. Attainment of the 24-hour standard is determined by calculating the expected number of exceedances of the 150 μg/m3 limit per year. The 24-hour standard is attained when the expected number of exceedances is 1.0 or less. A total of 3 consecutive years of clean air quality data is generally necessary to show attainment of the 24-hour and annual standards for PM–10. A complete year of air quality data, as referred to in 40 CFR part 50, appendix K, is comprised of all 4 calendar quarters with each quarter containing data from at least 75 percent of the scheduled sampling days.

Under section 188(b)(2)(A), a moderate PM–10 nonattainment area must be reclassified as serious by operation of law after the statutory attainment date if the Administrator finds that the area has failed to attain the NAAQS. Pursuant to section 188(b)(2)(B) of the Act, EPA must publish a notice in the **Federal Register** identifying those areas that failed to attain the standard and the resulting reclassifications.

C. CAA Provisions Concerning International Border Areas

Imperial County shares its southern border with Mexico. CAA section 179B(d) provides that, notwithstanding any other provision of law, any State that establishes to the satisfaction of EPA that a PM–10 nonattainment area in such State would have attained the PM–10 NAAQS by the applicable attainment date but for emissions emanating from outside the United States (U.S.) shall not be subject to the provisions of CAA section 182(b).

Section 179B(a) sets forth the state implementation plan (SIP) requirements for moderate PM–10 areas that can make the above demonstration.

II. Proposed Finding of Attainment Under CAA Section 179B(d)

EPA is today proposing to find that, pursuant to CAA section 179B(d), the State of California has established to EPA's satisfaction that Imperial County attained the NAAQS for PM–10 by the applicable attainment date, December 31, 1994, but for emissions emanating from outside the U.S., and thus shall not be subject to a finding of failure to attain and reclassification under CAA section 188(b)(2). As discussed below, this proposed finding is based on the ''Imperial County PM–10 Attainment Demonstration'' (hereafter referred to as the ''179B(d) demonstration'') which was developed by the Imperial County Air Pollution Control District (ICAPCD) and transmitted to EPA by the California Air Resources Board (CARB) on July 18, 2001. (July 18, 2001 letter with enclosure from Michael P. Kenny, Executive Officer, Air Resources Board to Ms. Laura Yoshii, Acting Regional Administrator, EPA Region 9).[1]

EPA has issued preliminary guidance relating to serious PM–10 nonattainment areas [2] (General Preamble guidance) that includes a discussion of the requirements applicable to international border areas. For these areas, the General Preamble guidance

[1] In his letter, Mr.Kenny state's that CARB ''worked closely with the Imperial County Air Pollution Control District * * * in developing their analysis, and agree with their conclusion that the area would have attained the standard from 1992 through 1994 but for transport from Mexico. Independent Air Resources Board analyses of all exceedances in that time frame support the District's conclusion.'' Because CARB has ratified the ICAPCD's 179B(d) demonstration and transmitted it to EPA, it is referred to in this proposal as the State's demonstration.

[2] ''State Implementation Plans for Serious PM–10 Nonattainment Areas, and Attainment Date Waivers for PM–10 Nonattainment Areas Generally; Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' 59 FR 41998, August 16, 1994.

discusses the information and methods that can be used in determining whether an area qualifies for treatment under CAA section 179B and then discusses SIP requirements for areas which are able to demonstrate that they would be in attainment but for the emissions emanating from outside the U.S. This proposal does not address the SIP requirements for the County but only the question of whether or not the State has established that Imperial County attained the NAAQS by December 31, 1994 but for international transport. If EPA issues a final finding that the nonattainment area would have attained but for international transport, EPA will in separate actions address the applicable SIP provisions and submissions by the State.

The General Preamble guidance states that ''[s]everal types of information may be used to evaluate the impact of emissions emanating from outside the U.S. The EPA will consider the information presented by the State for individual nonattainment areas on a case-by-case basis in determining whether an area may qualify for treatment under section 179B. * * *'' The General Preamble guidance also suggests five methods which may be used in determining the impact of emissions emanating from outside the U.S. and states that ''the State may use one or more of these types of information or other techniques, depending on their feasibility and applicability, to evaluate the impact of emissions emanating from outside the U.S. on the nonattainment area.'' Below is a discussion of each of the methods as addressed in the 179B(d) demonstration.

Method 1. Place several ambient PM–10 monitors and a meteorological station measuring wind speed and direction in the U.S. non-attainment area near the international border. Evaluate and quantify any changes in monitored PM–10 concentrations with a change in direction in the predominant wind direction.

There are six PM–10 monitors in the nonattainment area, with two monitors in the proximity of the border (Calexico-Grant St. and Calexico-Ethel St., each 1.2 km from the Mexican border). A meteorological station at the Imperial County Airport was used to provide a windrose for each exceedance day. The 179B(d) demonstration provided, for each exceedance day, an analysis of the transport of PM–10 from Mexico, based on the spatial distribution of PM–10 throughout the basin, along with a windrose, and a series of back trajectories (based on the National Oceanic and Atmospheric Administration HYSPLIT program). More details of this analysis are presented in the technical support document (TSD) for today's proposed rule.

PM–10 exceedances were recorded on seven days in the 1992–1994 time period. An analysis of the exceedances, which includes the spatial plots, windroses, and trajectories for each of the days, is presented in Appendix A to the 179B(d) demonstration. EPA's TSD discusses in detail each of the days and the basis for concluding that exceedances would not have occurred but for transport from Mexico.

For five of the days (August 23, 1993, July 7, 1994, August 6, 1994, October 17, 1994, and December 16, 1994) the analysis clearly supports the conclusion that but for the transport of emissions from Mexico, the PM–10 concentrations would not have exceeded the standard. The spatial plots for these days indicate a pattern of higher concentration near the border and show PM–10 concentrations decreasing with distance from the border. The windroses for August 23, 1993, July 7, 1994, August 6, 1994, indicate that a large number of hours (17 to 19) have the potential to carry emissions from Mexico to Imperial County.

For two of the exceedance days (January 19, 1993, and January 25, 1993) there are less data on which to base an analysis. The days are similar in character. For each day, there is only one measured value, at the Brawley monitor, which is slightly more than 20 miles from the border, so the spatial plot is inconclusive. The days are classified as stagnant. The windroses show that there is a potential to carry emissions from Mexico for 14 of 24 hours. The January 19, 1993 PM–10 concentration is only slightly above the standard (162 $\mu g/m^3$), and is likely to have been influenced by transport, given the stagnant conditions and the shape of the windrose. A PM–10 value of 175 $\mu g/m^3$ was measured on January 25, 1993. The emissions from Mexico are likely to have contributed to the PM–10 concentration at the monitor, although it is difficult to precisely quantify the extent of the contribution. Given the magnitude of emissions in the City of Mexicali (see method 4 discussion below), it is likely that the PM–10 standard would not have been exceeded but for the contribution of emissions from Mexico.

Method 2. Comprehensively inventory PM–10 emissions within the U.S. in the vicinity of the nonattainment area and demonstrate that the impact of those sources on the nonattainment area after application of reasonably available controls does not cause the NAAQS to be exceeded. This analysis must include an influx of background PM–10 in the area. Background PM–10 levels could be based on concentrations measured in a similar area not influenced by emissions from outside the U.S.

The 179B(d) demonstration relied on the most recent gridded modeling inventory available. This inventory was prepared by CARB as part of the Southern California Ozone Study,[3] using 1997 emissions data. A background concentration of 25 $\mu g/m^3$ was used, based on an analysis of the distribution of observed PM–10 data in Imperial County. The 25 $\mu g/m^3$ value represents the 10% cleanest days monitored in Imperial County. The inventory and background level were included in the modeling analysis discussed under method 5 below. The 179B(d) demonstration did not include an analysis of Method 2.

Method 3. Analyze ambient sample filters for specific types of particles emanating from across the border (although not required, characteristics of emissions from foreign sources may be helpful.)

The 1992–1993 Imperial Valley/Mexicali Cross Border PM–10 Transport Study (Final Report, January 30, 1997) includes an analysis of the particles collected in areas within Imperial County where violations have been recorded. This sample analysis determined that geological dust (70–90%), motor vehicle exhaust (10–15%) and vegetative burning (10%) account for the highest contribution to PM–10 concentrations. These are the predominant emissions sources on both sides of the border. Thus, the filter analysis by itself could not be used to determine the extent to which violations might result from international transport; however, as discussed in the TSD, the transport study provided conclusions about the international contribution based on a meteorological analysis of airflow in the study area.

Method 4. Inventory the sources on both sides of the border and compare the magnitude of PM–10 emissions originating within the U.S. to those emanating from outside the U.S.

The 1996 PM–10 emission inventory for the City of Mexicali, compiled by Radian (Radian International 2000

[3] The Southern California Ozone Study (SCOS) was a large-scale field measurement program carried out in southern California during the summer of 1997 to collect sufficient aerometric data to allow data analysts and modelers to characterize and simulate ozone formation and fate in the region. Several agencies and others participated during the planning and operational phases of the field study, including CARB, EPA, local districts, the U.S. Navy, and the marine industry.

Mexicali Air Emission Inventory, February 2000) is of lower quality than the emissions inventory for the Imperial County sources; however, it is useful for a comparison of the magnitude of PM–10 emissions from each side of the border. The estimated emissions for the City of Mexicali (257 tons/day) are approximately equal to the PM–10 inventory for Imperial County (246 tons/day). The density of the emissions is much higher in Mexicali than in Imperial County because the City of Mexicali covers a much smaller geographic area than Imperial County. Furthermore, the City of Mexicali is in close proximity to that portion of Imperial County where violations have been recorded. This comparison does not prove PM–10 transport into Imperial County, but it does suggest that the City of Mexicali has the potential to be a substantial source contributing to the PM–10 concentrations in Imperial County because of the magnitude of the emissions, the density of the emissions, and the proximity to Imperial County.

TABLE A.—COMPARISON OF IMPERIAL COUNTY AND MEXICALI PM–10 EMISSIONS

	Imperial county	City of Mexicali
1996 PM–10 Emissions (tons/day)	246	257
Population (2000)	142,361	662,617
Area—square miles	4060	200
Growth rate in percent (1990–2000) ..	30	42

Source: 1996 PM–10 emission inventory for the City of Mexicali, compiled by Radian (Radian International 2000 Mexicali Air Emission Inventory, February 2000).

Method 5. Perform air dispersion and/or receptor modeling to quantify the relative impacts on the non-attainment area of sources on PM–10 emissions.

The 179B(d) demonstration includes air dispersion modeling for 1992, 1993 and 1994. The modeling inputs (meteorological data and inventory), model selection and modeling results are discussed in the TSD. The performance of the model relative to measured ambient concentrations could not be determined because emissions from Mexicali were not modeled. Therefore, EPA cannot evaluate the model performance and, as a result, the Agency believes that the modeling results are not sufficiently robust at this time to demonstrate that Imperial County would have been in attainment of the 24-hour PM–10 standards but for PM–10 emissions from Mexico.

The results of the modeling are more useful for the demonstration of the annual standard, which is less sensitive to model inputs. The annual arithmetic mean for the Brawley monitoring station for the years 1992–1994 is only slightly above the annual standard, (51 $\mu g/m^3$), and this part of the basin is therefore likely to have attained the standard, but for international transport. The Calexico-Grant St. and Calexico-Ethel St. sites are in close proximity to the border. The Calexico Grant St. annual average was 56 $\mu g/m^3$. The Calexico-Ethel St. site, which has only partial data, has an annual average design value of 120 $\mu g/m^3$ in 1994, after adjustments upward for missing data. The modeling results (included in the TSD) also indicate that the annual standard would have been attained for each year from 1992–1994 at each of the Calexico sites.[4] Based on the proximity to the border, the magnitude of the Mexicali emissions and the modeling results, EPA believes, that the annual standard would have been attained at these sites but for transport.

Summary of EPA Evaluation of 179B(d) Demonstration

The State's demonstration is based on a competently collected and examined set of the relevant available information, and reaches a reasoned conclusion that each of the 1992–94 exceedances, which are only slightly above the NAAQS, would likely not have occurred without pollutant transport from Mexico. However, In reviewing the methods for determining international transport, EPA lacks some information that would be helpful in determining with greater certainty the extent to which emissions from Mexico contributed to monitored values above the NAAQS. For example, the State was hampered by the absence of ambient monitoring or accurate emission inventories in the Mexicali area in the period 1992–94. These data cannot now be recreated in order to enable a more conclusive analysis. Thus, EPA believes that the 179B(d) demonstration has provided evidence sufficient to show that, but for international transport of PM–10, Imperial County would have attained the 24-hour PM–10 NAAQS by the December 31, 1994 deadline. This showing rests primarily on the qualitative analysis of wind patterns on exceedance days discussed under method 1 and is further supported by the emissions inventories discussed under method 4. Furthermore, EPA believes the modeling discussed under Method 5 provides a demonstration that the annual PM–10 NAAQS has been attained but for international transport.

If EPA takes final action finding that the State has met the requirements of CAA section 179B(d), Imperial County must meet the planning requirements specified in CAA section 179B(a). Because the area has recorded PM–10 violations after 1994, EPA interprets the latter section as requiring, among other things, that the moderate area plan must provide for sufficient controls to demonstrate maintenance of the NAAQS after the applicable attainment date, but for emissions from outside of the United States.

III. Proposed Finding of Failure To Attain

As discussed above, EPA is proposing to find that the State of California has established to EPA's satisfaction that Imperial County would have attained the NAAQS for PM–10 by the applicable attainment date, December 31, 1994, but for emissions emanating from outside the U.S., and thus shall not be subject to a finding of failure to attain and reclassification. Because the 179B(d) demonstration is not completely definitive, however, EPA invites public comment on the issue and is proposing, in the alternative, to find that Imperial County did not attain either the 24-hour or annual PM–10 NAAQS by December 31, 1994. In the event that public comments convince EPA that the State has not made an adequate demonstration under section 179B(d) of the CAA, EPA plans to finalize this proposed finding of failure to attain. This proposed finding is based on air quality data (discussed below) indicating violations of the PM–10 NAAQS during 1992–1994. If EPA takes final action on this proposed finding, Imperial County will be reclassified by operation of law as a serious nonattainment area under section 188(b)(2)(A) of the CAA.

A. Analysis of the Ambient Air Monitoring Data

The 24-hour Standard

Table C below lists each of the monitoring sites in Imperial County where the 24-hour NAAQS (150 $\mu g/m^3$) was violated during 1992–1994.

Note: There is no Table B in this proposed rule.

[4] Modeled annual average concentrations at all of the sites are below 43 $\mu g/m^3$ for each of the 3 years, assuming only emissions from the United States side of the border.

TABLE C.—EXCEEDANCE VALUES FOR SITES VIOLATING THE 24-HOUR PM–10 NAAQS

[Micrograms per cubic meter, μg/m³]

Site	Exceedance	Date of exceedance
Brawley	175 μg/m³	1/25/93
	162 μg/m³	1/19/93
Calexico Dichot—900 Grant Street	208 μg/m³	10/9/92
	253 μg/m³	8/23/93
	156 μg/m³	1/20/94
El Centro	166 μg/m³	8/23/93
El Centro Dichot	167 μg/m³	8/23/93
Calexico—900 Grant St. (initiated 1994)	182 μg/m³	8/6/94
	165 μg/m³	7/7/94
	159 μg/m³	10/17/94
Calexico—1029 Ethel St. (initiated 1994)	258 μg/m³	8/6/94

Under 40 CFR part 50, the 24-hour NAAQS is attained when the expected number of days per calendar year with a 24-hour average concentration above 150 μg/m³ is equal to or less than one. In general, the number of expected exceedances at a site which samples every day is determined by recording the number of exceedances in each calendar year and then averaging them over the past three calendar years. For sites which do not sample every day, EPA requires the adjustment of observed exceedances to account for days not sampled. The procedures for making the adjustment are specified in 40 CFR part 50, appendix K.

The four monitoring sites (Brawley, Calexico-Dichot, El Centro, and El Centro-Dichot) in Imperial County that recorded violations of the 24-hour PM–10 NAAQS operated on a one-in-six day sampling schedule. After making the adjustment for days not sampled, the number of expected exceedances from 1992–1994 at four of the above monitoring sites were 4.3, 6.1, 2.0 and 2.0, for the Brawley, Calexico Dichot—Grant St., El Centro and El Centro Dichot sites, respectively. These expected exceedances cause the four monitoring sites to be in violation of the 24-hour PM–10 NAAQS. EPA is also including data from two additional samplers (Calexico—Grant St. and Calexico—Ethel St.) which exceeded the 24-hour PM–10 NAAQS in their initial year of operation, 1994.

The Annual Standard

Table D below lists each of the monitoring sites where the annual standard was violated during 1992–1994.

TABLE D.—ARITHMETIC MEAN VALUES FOR SITES VIOLATING THE ANNUAL PM–10 NAAQS

[Micrograms per cubic meter, μg/m³]

Site	1992 annual arithmetic mean	1993 annual arithmetic mean	1994 annual arithmetic mean
Brawley	48 μg/m³	53 μg/m³	52 μg/m³.
Calexico Dichot—900 Grant St.	58 μg/m³	59 μg/m³	50 μg/m³.
Calexico—900 Grant St. (initiated 1994)	ND	ND	75 μg/m³.
Calexico—1029 Ethel St. (Initiated 1994)	ND	ND	120 μg/m³.

ND—No Data.

According to 40 CFR part 50, the annual standard for PM–10 is attained when the expected arithmetic mean concentration, as determined by 40 CFR part 50 Appendix K, is less than or equal to 50 μg/m³. In general, the expected annual arithmetic mean is determined by averaging the annual arithmetic mean PM–10 concentrations for the past 3 calendar years.

The annual standard was not attained at two monitoring sites (Brawley and Calexico Dichot—Grant St.) in Imperial County. Based on the monitoring data collected during 1992–1994, the Brawley site had an annual average of 51 μg/m³, and the Calexico Dichot—Grant St. had an annual average of 56 μg/m³. EPA is also including data from 2 additional samplers (Calexico—Grant St. and Calexico—Ethel St.) which violated the annual PM–10 NAAQS and were initiated in 1994.

B. SIP Requirements for Serious Areas

If EPA takes final action finding that Imperial County failed to attain the PM–10 NAAQS by December 31, 1994, the area will be reclassified by operation of law as a serious nonattainment area under section 188(b)(2)(A) of the CAA. PM–10 nonattainment areas reclassified as serious under section 188(b)(2) of the CAA are required to submit, within 18 months of the area's reclassification, SIP revisions providing for the implementation of best available control measures (BACM) no later than four years from the date of reclassification. The SIP must also, among other things, provide for attainment of the PM–10 NAAQS by December 31, 2001.[5] See CAA sections 188(c)(2) and 189(b). EPA has provided specific guidance on developing serious area PM–10 SIP revisions. See 59 FR 41998 (August 16, 1994).

IV. Today's Proposed Actions

EPA is today proposing to find that the State of California has established to EPA's satisfaction that Imperial County has attained the PM–10 NAAQS by the applicable attainment date, December 31, 1994, but for the emissions emanating from outside the U.S., and thus shall not be subject to a finding of failure to attain and reclassification to serious.

[5] If certain conditions are met, EPA may extend this attainment deadline to no later than December 31, 2006. CAA section 188(e).

In view of the technical issues and difficulties involved in demonstrating cross-border transport and in the event that public comment convinces EPA that the State has not made an adequate demonstration, EPA is also proposing, in the alternative, to find that Imperial County did not attain either the 24-hour or annual PM–10 NAAQS by the required attainment date. If EPA takes final action on this proposed finding, Imperial County will be reclassified by operation of law as a serious nonattainment area under section 188(b)(2)(A) of the CAA.

EPA requests public comments on all aspects of these alternative proposals. EPA will consider any comments received by September 10, 2001.

V. Administrative Requirements

A. Executive Order 12866

Under E.O. 12866, 58 FR 51735 (October 4, 1993), EPA is required to determine whether regulatory actions are significant and therefore should be subject to OMB review, economic analysis, and the requirements of the Executive Order. The Executive Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may meet at least one of the four criteria identified in section 3(f), including, (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 therof; 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 has determined that the proposed finding of attainment pursuant to CAA section 179B(d) and the proposed finding of failure to attain and the resulting reclassification would result in none of the effects identified in section 3(f). A finding of attainment under section 179B(d) of the CAA does not impose any additional requirements on an area and a finding of failure to attain under section 188(b)(2) is based upon air quality considerations and the subsequent nonattainment area reclassification must occur by operation of law in light of those air quality conditions. These actions do not, in-and-of-themselves, impose any new requirements on any sectors of the economy. In addition, because the statutory requirements are clearly defined with respect to the differently classified areas, and because those requirements are automatically triggered by classifications that, in turn, are triggered by air quality values, findings of failure to attain and reclassification cannot be said to impose a materially adverse impact on State, local, or tribal governments or communities.

B. Executive Order 13211

The proposed finding of attainment under CAA 179B(d) and the proposed finding of failure to attain and the resulting reclassification are not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because they are not significant regulatory actions under Executive Order 12866.

C. Executive Order 13045

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

The proposed finding of attainment under CAA 179B(d) and the proposed finding of failure to attain under CAA 188(b)(2) and resulting reclassification are not subject to Executive Order 13045 because they do not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13132

Executive Order 13132, ''Federalism,'' (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, ''Federalism,'' and 12875, ''Enhancing the Intergovernmental Partnership.'' Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

These proposed findings will not have substantial direct effects on California, on the relationship between the national government and California, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. As stated above, a finding of attainment under section 179B(d) of the CAA does not impose any additional requirements on an area and a finding of failure to attain under section 188(b)(2) is based upon air quality considerations and the subsequent nonattainment area reclassification must occur by operation of law in light of those air quality conditions. These actions do not, in-and-of-themselves, impose any new requirements on any sectors of the economy. In addition, because the statutory requirements are clearly defined with respect to the differently classified areas, and because those requirements are automatically triggered by classifications that, in turn, are triggered by air quality values, findings of failure to attain and reclassification cannot be said to impose a materially adverse impact on State, local, or tribal governments or communities. Thus, the requirements of section 6 of the Executive Order do not apply to these proposed alternative actions.

E. Executive Order 13175

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal

implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

The proposed finding of attainment under CAA 179B(d) and the proposed finding of failure to attain under CAA 188(b)(2) and resulting reclassification do not have tribal implications. For the reasons discussed above, they will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule. In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on this proposed rule from tribal officials.

F. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

As discussed above, the proposed finding of attainment under CAA 179B(d) and the proposed finding of failure to attain under CAA 188(b)(2) and resulting reclassification do not impose additional requirements on small entities. Therefore, I certify that these alternative actions will not have a significant economic impact on a substantial number of small entities.

G. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

With respect to EPA's proposed finding of attainment under CAA 179B(d) and the proposed finding of failure to attain under CAA 188(b)(2) and resulting reclassification, EPA notes that these actions in-and-of themselves establish no new requirements, and EPA believes that it is questionable whether a requirement to submit a SIP revision constitutes a federal mandate (i.e., required serious area SIP submittal resulting from a finding of failure to attain). The obligation for a State to revise its SIP arises out of sections 110(a) and 179(d) of the CAA and is not legally enforceable by a court of law, and at most is a condition for continued receipt of highway funds. Therefore, it is possible to view an action requiring such a submittal as not creating any enforceable duty within the meaning of section 421(5)(9a)(I) of UMRA (2 U.S.C. 658(a)(I)). Even if it did, the duty could be viewed as falling within the exception for the condition of Federal assistance under section 421(5)(a)(I)(I) of UMRA (2 U.S.C. 658(5)(a)(I)(I)).

In addition, even if the obligation for a State to revise its SIP does create an enforceable duty within the meaning of UMRA, this action does not trigger section 202 of UMRA because the aggregate to the State, local, and tribal governments to comply are less than $100,000,000 in any one year. Because this action does not trigger section 202 of UMRA, the requirement in section 205 of UMRA that EPA identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most effective, or least burdensome alternative that achieves the objectives of the rule is not applicable.

Furthermore, EPA is not directly establishing any regulatory requirements that may significantly impact or uniquely affect small governments, including tribal governments. Thus, EPA is not obligated to develop under section 203 of UMRA a small government agency plan.

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to today's proposed actions because they do not require the public to perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401–7671q.

Dated: August 6, 2001.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 01–20209 Filed 8–9–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261, 262, 263, 264, 265, 271

[FRL–7030–4]

RIN 2050–AE21

Extension of Comment Period for the Proposed Modifications of the Hazardous Waste Manifest System

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; extension of comment period for modifications of the hazardous waste manifest system.

SUMMARY: In response to the Association of State and Territorial Solid Waste Management Officials (ASTSWMO), the Environmental Protection Agency (EPA) is extending the comment period on its proposed modifications to the Uniform Hazardous Waste Manifest regulations. On May 22, 2001 (66 FR 28240), EPA proposed modifications to the hazardous waste manifest system and the manifest form that is used to track hazardous waste shipments during their transportation. The comment period announced in the proposed rule notice was scheduled to end on August 20, 2001. Today's document further extends the comment period on the proposed manifest system modifications until October 4, 2001.

DATES: Written comments on the proposed hazardous waste manifest modifications must be submitted on or before October 4, 2001.

ADDRESSES: Commenters must send an original and two copies of their comments referencing docket number

F–2000–UWMP–FFFFF to: RCRA Docket Information Center, Office of Solid Waste (5305W), U.S. Environmental Protection Agency Headquarters (EPA, HQ), Ariel Rios Building, 1200 Pennsylvania Ave., N.W., Washington, DC 20460. Hand deliveries of comments should be made to the Arlington, VA, address below. Comments may also be submitted electronically to: rcra-docket@epa.gov. Comments in electronic format should also be identified by the docket number F–2000–UWMP–FFFFF. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Commenters should not submit electronically any confidential business information (CBI). An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Ave., N.W., Washington, DC 20460. Public comments and supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway One, First Floor, 1235 Jefferson Davis Highway, Arlington, VA 22202. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory document at no cost. Additional copies cost $0.15 per page. The index and some supporting materials are available electronically. See the **SUPPLEMENTARY INFORMATION** section for information on accessing them.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at (800) 424–9346 or TDD (800) 553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call (703) 412–9810 or TDD (703) 412–3323. For more detailed information on specific aspects of this rulemaking, contact Richard LaShier (5304W), Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, (703) 308–8796, *lashier.rich@epa.gov.*

SUPPLEMENTARY INFORMATION: The Agency is extending the comment period on this proposed rule in response to a written request for extension submitted to the rulemaking docket by the Hazardous Waste Information Management Task Force of the Association of State and Territorial Solid Waste Management Officials (ASTSWMO). ASTSWMO's membership consists of personnel in the State and territorial hazardous waste programs that have been authorized by EPA to implement hazardous waste programs under the Resource Conservation and Recovery Act (RCRA). The authorized state agencies are significant stakeholders in this rulemaking, as they will be called upon to implement and enforce any changes to the manifest system that result from this rulemaking. In its June 19, 2001 extension request, ASTSWMO pointed out that discussions among the states during the development of the proposal had identified a diversity of opinions among them on the subject matter of the rulemaking. ASTSWMO anticipates that the proposed rule will likewise generate a diversity of comments from the State waste management programs. Therefore, ASTSWMO requested additional time to closely review the proposal to identify all the various issues that may affect the States and require attention during the rulemaking.

The authorized State hazardous waste programs have contributed greatly to this rulemaking since its inception in 1990 with a rulemaking petition from ASTSWMO requesting modifications to the hazardous waste manifest system. EPA values highly the comments that ASTSWMO and its members are developing during the comment period, and the Agency believes that extending the time for submitting written comments will improve the quality and completeness of the comments that we eventually receive in response to the May 22, 2001 proposed rule notice. Therefore, EPA is granting ASTSWMO's extension request, and the Agency has decided to extend the public comment period until October 4, 2001.

Dated: August 3, 2001.

Michael H. Shapiro,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 01–20136 Filed 8–9–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7025–9]

Hazardous Waste Management Program: Final Authorization of State Hazardous Waste Management Program Revisions for State of New Mexico

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and request for comment.

SUMMARY: The EPA (also, ''the Agency'' in this preamble) is proposing to grant final authorization to the State of New Mexico Environment Department for its hazardous waste program revisions, specifically, revisions needed to meet the Resource Conservation and Recovery Act Clusters V through IX, which contains Federal rules promulgated between July 1, 1994 to June 30, 1999. In the ''Rules and Regulations'' section of this **Federal Register** (FR), EPA is authorizing the State's program revisions as an immediate final rule without prior proposal because the EPA views this action as noncontroversial and anticipates no adverse comments. The Agency has explained the reasons for this authorization in the preamble to the immediate final rule. If EPA does not receive adverse written comments, the immediate final rule will become effective and the Agency will not take further action on this proposal. If EPA receives adverse written comments, a second **Federal Register** document will be published before the time the immediate final rule takes effect. The second document may withdraw the immediate final rule or identify the issues raised, respond to the comments and affirm that the immediate final rule will take effect as scheduled. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before September 10, 2001.

ADDRESSES: Mail written comments to Alima Patterson, Region 6, Regional Authorization Coordinator, Grants and Authorization Section (6PD–G), Multimedia Planning and Permitting Division, at the address shown below. You can examine copies of the materials submitted by the State of New Mexico during normal business hours at the following locations: EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–6444; or New Mexico Environment Department, 2044 Galisteo, Santa Fe, New Mexico 87505, phone (505) 827–1561.

FOR FURTHER INFORMATION CONTACT: Alima Patterson (214) 665–8533.

SUPPLEMENTARY INFORMATION: For additional information, please see the immediate final rule published in the ''Rules and Regulations'' section of this **Federal Register**.

Dated: May 18, 2001.

Jerry Clifford,

Acting Regional Administrator, Region 6.

[FR Doc. 01–19602 Filed 8–9–01; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 66, No. 155
Friday, August 10, 2001

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Northwest Sacramento Provincial Advisory Committee (SAC PAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Northwest Sacramento Provincial Advisory Committee (PAC) will meet on August 23, 2001, at Whiskeytown National Park, California. The purpose of the meeting is to discuss issues relating to implementing the Northwest Forest Plan.

DATES: The meeting will be held August 23, 2001.

ADDRESSES: The meeting will be held in the Cafeteria Building of the National Environmental Education Development Camp at Whiskeytown National Park, CA.

FOR FURTHER INFORMATION CONTACT: Jackie Riley, Committee Coordiantor, USDA, Shasta-Trinity National Forest, 2400 Washington Ave., Redding, CA, 96001 (530) 242–2203; e-mail: *jriley01@fs.fed.us*.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: August 6, 2001.

J. Sharon Heywood,

Forest Supervisor.

[FR Doc. 01–20089 Filed 8–9–01; 8:45 am]

BILLING CODE 3410–FK–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Southern Illinois Power Cooperative; Notice of Intent

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of intent to hold scoping meeting and prepare an environmental assessment.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS), pursuant to the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality (CEQ) Regulations for implementing NEPA (40 CFR parts 1500–1508), and RUS Environmental Policies and Procedures (7 CFR part 1794) proposes to hold a scoping meeting and prepare an Environmental Assessment (EA) for its Federal action related to a project proposed by Southern Illinois Power Cooperative (SIPC) of Marion, Illinois. The project consists of two simple-cycle electric combustion turbines and the associated facilities. The proposed combustion turbines will have a total nominal generating capacity of 166 megawatts (MW), with a summertime rating of 144 MW. The combustion turbines will be located across the road immediately west of SIPC's existing Marion Station approximately 8 miles south of Marion, Illinois.

Meeting Information: RUS will conduct a scoping meeting in open house forum on Wednesday, September 5, 2001, at the Marion High School, 1501 South Carbon Street, Marion, Illinois 62959, from 5 p.m. until 8 p.m.

FOR FURTHER INFORMATION CONTACT: Nurul Islam, Environmental Protection Specialist, RUS, Engineering and Environmental Staff, 1400 Independence Avenue, SW, Washington, DC 20250–1571, telephone (202) 720–1784, FAX: (202) 720–0820, e-mail: *nislam@rus.usda.gov.* Information is also available from Mr. Dick Myott, Environmental & Planning Department Manager, Southern Illinois Power Cooperative, 11543 Lake of Egypt Road, Marion, Illinois 62959, telephone (618) 964–1448 Ext. 268. His e-mail address is: rmyott@sipower.org.

SUPPLEMENTARY INFORMATION: SIPC proposes to construct the facility in Williamson County, Illinois. The primary purpose of the facility is to meet SIPC peak electrical load during hot summer weather. Under those conditions the facility's expected output is about 144 MW of power. The proposed project will consist of two simple cycle combustion turbines. The turbines will have a total gross rating of 166 MW. The primary fuel will be natural gas and the Number 2 fuel oil will serve as the back-up fuel. The plant will require approximately 15 acres of land. The project will also require construction of a total of about five-mile long new high-pressure gas line from the proposed generating station east to an intersection of two natural gas pipelines. The Texas Eastern Company and the Trunkline Gas Company own these lines. The construction of the gas pipeline will need a right-of-way approximately 35 to 50 wide. A 12-inch pipe will be installed in the trench of approximately 4 feet deep. The combustion turbine uses demineralized water injection for flue gas emissions control when firing with the Number 2 back up fuel oil and they will use approximately 225 gallons of water per minute. Water injection is not required when firing the natural gas fuel.

Alternatives to be considered by RUS and SIPC include no action, purchased power, upgrade of existing resources, new transmission facilities, alternative sites, alternative routes, fossil fuel technologies, customer-owned generation, energy conservation, renewable resources, and emerging technologies.

SIPC has prepared an Alternative Evaluations and Siting Studies for the project. The report is available for public review at the RUS or SIPC at the addresses provided in this notice and at the following location: Marion Carnegie Public Library, 206 South Market Street, Marion, Illinois 62959, (618) 993–5935.

Federal, state and local agencies, private organizations, and the public are invited to participate in the planning and analysis of the proposed project. Representatives from RUS and SIPC will be available at the scoping meeting to discuss RUS's environmental review process, the proposed project and the alternatives being considered, scope of the environmental issues to be considered, and answer questions. Oral and written comments will be accepted at the scoping meeting. Written comments regarding the proposed project will also be accepted for at least 30 days after the scoping meeting. All written comments should be sent to RUS at the address provided in this notice. 2

Any final action by RUS related to the proposed project will be subject to, and contingent upon, compliance with all

relevant Federal environmental laws and regulations and completion of environmental review procedures as prescribed by the CEQ Regulations and RUS Environmental Policies and Procedures.

Dated: August 2, 2001.

Lawrence R. Wolfe,

Acting Director, Engineering and Environmental Staff, Rural Utilities Service.

[FR Doc. 01–20122 Filed 8–9–01; 8:45 am]

BILLING CODE 3410–15–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the procurement list.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATES: September 10, 2001.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Louis R. Bartalot (703) 603–7740.

SUPPLEMENTARY INFORMATION: On April 27, June 15 and June 22, 2001 the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (66 FR 21118, 32598 and 33521) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will not have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Accordingly, the following services are added to the Procurement List:

Services

Airfield Alert Support Services

Robert Gray Army Airfield, III Corps and Fort Hood Army Airfield, Fort Hood, Texas

Family Housing Maintenance

Watervliet Arsenal, Rotterdam Housing Area, Watervliet, New York

Janitorial/Custodial

Bolling Air Force Base, Washington, DC

Janitorial/Custodial

U.S. Army Reserve Center, Saco, Maine

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 01–20103 Filed 8–9–01; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from procurement list.

SUMMARY: The Committee is proposing to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete commodities previously furnished by such agencies.

DATES: Comments must be received on or before September 10, 2001.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Louis R. Bartalot (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed addition, the entities of the Federal Government identified in this notice for each commodity or service will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will result in authorizing small entities to furnish the commodities and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List. Comments on this certification are invited.

Commenters should identify the statement(s) underlying the certification on which they are providing additional information. The following commodities and services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Paper, Xerographic & Inkjet (Large Format)
7530–00–NIB–0483
7530–00–NIB–0598
7530–00–NIB–0599
7530–00–NIB–0600
7530–00–NIB–0601
7530–00–NIB–0602
7530–00–NIB–0603
7530–00–NIB–0604
7530–00–NIB–0605
7530–00–NIB–0606
7530–00–NIB–0607
7530–00–NIB–0608
7530–00–NIB–0609
7530–00–NIB–0610
7530–00–NIB–0611
7530–00–NIB–0612
7530–00–NIB–0613

7530–00–NIB–0614
7530–00–NIB–0615
7530–00–NIB–0616
7530–00–NIB–0617
7530–00–NIB–0618
7530–00–NIB–0619
7530–00–NIB–0620
7530–00–NIB–0621
7530–00–NIB–0622
7530–00–NIB–0623
7530–00–NIB–0624
7530–00–NIB–0625
7530–00–NIB–0626
7530–00–NIB–0627
7530–00–NIB–0628
7530–00–NIB–0629
7530–00–NIB–0630
7530–00–NIB–0631
7530–00–NIB–0632
7530–00–NIB–0633
7530–00–NIB–0635
7530–00–NIB–0636
7530–00–NIB–0637
7530–00–NIB–0638
7530–00–NIB–0639
7530–00–NIB–0640
7530–00–NIB–0641
7530–00–NIB–0642

NPA: Wiscraft Inc.—Wisconsin Enterprises for the Blind Milwaukee, Wisconsin
Government Agency: GSA/Office Supplies and Paper Products Commodity Center
Paper, Xerographic 7530–01–398–2652
NPA: Louisiana Association for the Blind, Shreveport, Louisiana
Government Agency: GSA/Office Supplies and Paper Products Commodity Center

Services

Grounds Maintenance, Naval and Marine Corps Reserve Center, Encino, California
NPA: Lincoln Training Center & Rehabilitation Workshop
South El Monte, California
Government Agency: Naval and Marine Corps Reserve Center, Encino, California

Janitorial/Custodial, Eielson Air Force Base, Alaska
NPA: Fairbanks Resource Agency Fairbanks, Alaska
Government Agency: Eielson Air Force Base, Alaska

Janitorial/Custodial

At the Following Location:

Boulevard Border Patrol Station, 39701 Avenida de Robles Verdes, Boulevard, California
Campo Border Patrol Station, 3 Forestgate Road, Campo, California
IH–8 West Checkpoint, 728 Interstate 8 Westbound, Pine Valley, California
Dulzura Border Patrol Horse Patrol Station, 17323D Highway 94, Dulzura, California
Imperial Beach Border Patrol Station, 1802 Saturn Boulevard, San Diego, California
San Clemente Check Point, San Clemente, California
San Diego Border Patrol Sector Air Operations, 720 Curran Street, San Diego, California
San Diego Border Patrol Alien Detention Center, 760 Boeing Road, San Diego, California
San Diego Sector Border Patrol Hill on Beyer, 3752 Beyer Blvd, San Diego, California
San Diego Sector Border Patrol Barracks 4 & 5, 3752 Beyer Blvd, San Diego, California
Chula Vista Border Patrol Station, San Ysidro, California
State Route 94 West Border Patrol Checkpoint, 15430A Campo Road, Jamul, California
NPA: Orange County ARC, Orange, California
Government Agency: DOJ/Immigration and Naturalization Service

Janitorial/Custodial, Andrews Air Force Base, Maryland

NPA: The Chimes, Inc., Baltimore, Maryland
Government Agency: Andrews Air Force Base, Maryland

Janitorial/Grounds Maintenance

At the Following Locations:

Sonoita Border Patrol Station, 3225 Highway 82, Sonoita, Arizona
Tucson Station (Silverbell), 3200 N. Silverbell Road, Tucson, Arizona
Tucson Sector HQ, 2010 W. Ajo Way, Tucson, Arizona
Willcox Border Patrol Station, 200 W Downen, Willcox, Arizona
Douglas Border Patrol Station, 1051 Lawrence Avenue, Douglas, Arizona
Ajo Border Patrol Station, 850 N. Tucson/Ajo Highway, Ajo, Arizona
Tucson Sector HQ (Building 9), 2010 W. Ajo Way, Tucson, Arizona
NPA: J.P. Industries, Inc., Tucson, Arizona
Government Agency: DOJ/Immigration and Naturalization Service

Janitorial/Grounds Maintenance

At the Following Locations:

Calexico Border Station, 11150 Birch Street, Calexico, California
El Centro HQ Sector, 1111 N. Imperial Avenue, El Centro, California
Existing El Centro Station, 1081 N. Imperial Avenue, El Centro, California
Highway 111 Checkpoint, Mile Marker 51/ Niland, Niland, California
Highway 86 Checkpoint, 100 Yards South of Highway 78, Highway 78 and Highway 86, Niland, California
NPA: Imperial County Work Training Center, Inc., El Centro, California

Government Agency: DOJ/Immigration and Naturalization Service

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will result in authorizing small entities to furnish the commodities and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for deletion from the Procurement List.

The following commodities are proposed for deletion from the Procurement List:

Commodities

Mat, Floor
7220–00–165–7020
Mat, Floor
7220–00–238–8854
Dining Packet
7360–00–935–6407
Ballpoint Pen, Stick, Rubberized Barrel
7520–01–422–0319
7510–01–446–4853
7510–01–446–4854
Refill, Ballpoint Pen, Stick, Rubberized
7510–01–357–6831
7510–01–357–6832
7510–01–357–6834

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 01–20104 Filed 8–9–01; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

[I.D. 080701A]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Western Alaska Community Development Quota Program.

Form Number(s): None.

OMB Approval Number: 0648–0269.

Type of Request: Regular submission.

Burden Hours: 3,746.

Number of Respondents: 85.

Average Hours Per Response: 520 hours for a Community Development Program (CDP) proposal, 40 hours for an annual CDP report, 20 hours for an annual CDP budget report, 8 hours for an annual CDP budget reconciliation report, 8 hours for a substantial amendment to a CDP, 4 hours for a technical amendment to a CDP, 1 hour for a delivery report, 15 minutes for a catch report, 2 minutes for a prior notice to an observer of delivery/offloading or of an incoming haul or set.

Needs and Uses: The Community Development Program allocates a portion of the quota for certain species in the Bering Sea and Aleutian Islands to Western Alaska communities so that these communities can start and support regionally-based commercial seafood or

other fisheries-related businesses. NOAA needs to collect information to administer and manage the program. The information collected will be used to determine whether communities applying for allocations under the Program meet regulatory requirements, whether vessels and processors utilizing Community Development Program Quota species meet operational requirements, and to monitor whether quotas have been harvested or exceeded.

Affected Public: Not-for-profit institutions, business or other for-profit organizations.

Frequency: On occasion, weekly, annually.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: August 3, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–20114 Filed 8–9–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

[I.D. 080701D]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: NOAA Satellite Ground Station Customer Questionnaire.

Form Number(s): None.

OMB Approval Number: 0648–0227.

Type of Request: Regular submission.

Burden Hours: 50.

Number of Respondents: 300.

Average Hours Per Response: 10 minutes.

Needs and Uses: The National Oceanic and Atmospheric Administration (NOAA) operates four meteorological satellite imagery transmissions systems–two from geostationary (GOES) satellites and two from polar-orbiting (TIROS) satellites. The data transmitted are available worldwide, and any user can establish a ground receiving station for reception of the data without prior consent or other approval from NOAA. The questionnaire allows NOAA to learn about who uses the data, what and location equipment is used, and similar subjects.

Affected Public: Not-for-profit institutions, individuals and households, business or other for-profit organizations, farms, Federal, state, local or tribal government.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: August 3, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–20117 Filed 8–9–01; 8:45 am]

BILLING CODE 3510–HR–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–098]

Anhydrous Sodium Metasilicate From France: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request from a domestic interested party, the Department of Commerce is conducting an administrative review of the antidumping duty order on anhydrous sodium metasilicate from France for the period January 1, 2000, through December 31, 2000. This review covers one producer/exporter of subject merchandise, Rhodia, S.A.

We have preliminarily determined a dumping margin in this review. If these preliminary results are adopted in the final results of this administrative review, we will instruct the Customs Service to assess antidumping duties on any entries of subject merchandise manufactured or exported by Rhodia, S.A.

We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: August 10, 2001.

FOR FURTHER INFORMATION CONTACT: George Callen, AD/CVD Enforcement 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0180.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the regulations codified at 19 CFR part 351 (2000).

Background

On January 18, 2001, the Department published a notice of ''Opportunity to Request Administrative Review'' (66 FR 4796) with respect to the antidumping duty order on anhydrous sodium metasilicate (ASM) from France. The petitioner, PQ Corporation, requested a review of Rhodia HPCII (formerly ''Rhone-Poulenc, S.A.'') (Rhodia) on January 23, 2001. In response to PQ Corporation's request, the Department published a notice of initiation of an administrative review on February 28, 2001 (66 FR 12758), in accordance with 19 CFR 351.213(b).

Scope of Order

Imports covered by the order are shipments of ASM, a crystallized silicate which is alkaline and readily soluble in water. Applications include waste paper de-inking, ore-flotation, bleach stabilization, clay processing, medium or heavy duty cleaning, and compounding into other detergent

formulations. This merchandise is classifiable under the *Harmonized Tariff Schedules of the United States* (HTSUS) item numbers 2839.11.00 and 2839.19.00. The HTSUS item numbers are provided for convenience and customs purposes. The written description of the scope of the order remains dispositive.

Period of Review

The period of review is January 1, 2000, through December 31, 2000.

Facts Available

Section 776(a)(2) of the Act provides that, if an interested party (1) withholds information that has been requested by the Department, (2) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act, (3) significantly impedes a determination under the antidumping statute, or (4) provides such information but the information cannot be verified as provided in section 782(i) of the Act, then the Department shall, subject to section 782(d) of the Act, use facts otherwise available in determining dumping margins.

The Department sent Rhodia a questionnaire on March 30, 2001, with a due date of May 8, 2001, for providing information necessary to conduct a review of any shipments that the firm may have made to the United States during the period of review. Rhodia did not respond to our original questionnaire. On May 11, 2001, the Department sent a follow-up letter to Rhodia. Rhodia did not respond to the letter. Because Rhodia has withheld information we requested and has, in fact, made no effort to participate in this proceeding, we must use, pursuant to sections 776(a)(2)(A) and (B) of the Act, facts otherwise available to determine its dumping margins. Because Rhodia has provided no information whatsoever, we find that sections 782(d) and (e) are inapplicable.

Based on the lack of any response from Rhodia, we find that the company has failed to cooperate by not acting to the best of its ability to comply with a request for information. Therefore, pursuant to section 776(b) of the Act, the Department may use an inference that is adverse to the interests of Rhodia in selecting from among the facts otherwise available. This section also provides that an adverse inference may include reliance on information derived from the petition, the final determination in the investigation segment of the proceeding, a previous review under section 751 of the Act or a determination under section 753 of the Act, or any other information placed on the record. In addition, the Statement of Administrative Action accompanying the URAA, H.R. Doc. 316, Vol. 1, 103d Cong. (1994) (SAA), establishes that the Department may employ an adverse inference ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' SAA at 870. In employing adverse inferences, the Department is instructed to consider ''the extent to which a party may benefit from its own lack of cooperation.'' *Id.* Because we find that Rhodia failed to cooperate by not complying with our request for information and in order to ensure that it does not benefit from its lack of cooperation, we are employing an adverse inference in selecting from the facts available.

The Department's practice when selecting an adverse rate from among the possible sources of information has been to ensure that the margin is sufficiently adverse ''as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner.'' *See Static Random Access Memory Semiconductors From Taiwan; Final Determination of Sales at Less Than Fair Value,* 63 FR 8932 (February 23, 1998).

In order to ensure that the rate is sufficiently adverse so as to induce Rhodia's cooperation, we have assigned this company as adverse facts available a rate of 60.0 percent, the rate currently applicable to Rhodia, which is the margin calculated in the original less-than-fair-value (LTFV) investigation using information provided by Rhodia. *See Anhydrous Sodium Metasilicate from France; Antidumping Final Determination of Sales at Less Than Fair Value,* 45 FR 77498 (November 24, 1980).

Section 776(c) of the Act provides that the Department when using secondary information shall, to the extent practicable, corroborate information used by reviewing independent sources reasonably at its disposal. Information from a prior segment of the proceeding, such as that used here, constitutes secondary information. The SAA provides that to ''corroborate'' means simply that the Department will satisfy itself that the secondary information to be used has probative value. SAA at 870. As explained in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews,* 61 FR 57391, 57392 (November 6, 1996), to corroborate secondary information, the Department will examine, to the extent practicable, the reliability and relevance of the information used.

Unlike other types of information, such as input costs or selling expenses, there are no independent sources from which the Department can derive calculated dumping margins; the only source for margins is administrative determinations. In an administrative review, if the Department chooses as total adverse facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. *See Roller Chain, Other Than Bicycle, From Japan; Notice of Final Results and Partial Recission of Antidumping Duty Administrative Review,* 62 FR 60472, 60477 (November 10, 1997).

With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin. *See Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996) (the Department disregarded the highest dumping margin as adverse best information available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin). There is no evidence of circumstances indicating that the margin used as facts available in this review is not appropriate. We note that Rhodia and its predecessor, Rhone-Poulenc, have failed to participate in numerous prior segments of this proceeding and thus have been subject to the rate of 60 percent for many years. Therefore, the requirements of section 776(c) of the Act are satisfied.

Preliminary Results of the Review

As a result of this review, the Department preliminarily determines that a margin of 60 percent exists for Rhodia for the period January 1, 2000, through December 31, 2000.

Interested parties may request a hearing not later than 30 days after publication of this notice. Interested parties may also submit written arguments in case briefs on these

preliminary results within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in case briefs, may be filed no later than five days after the time limit for filing case briefs. Parties who submit arguments are requested to submit with each argument a statement of the issue and a brief summary of the argument. Any hearing, if requested, will be held three days after the scheduled date for submission of rebuttal briefs.

The Department will publish the final results of this administrative review, including a discussion of its analysis of issues raised in any case or rebuttal brief or at a hearing. The Department will issue final results of this review within 120 days of publication of these preliminary results.

Upon completion of the final results in this review, the Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The rate will be assessed uniformly on all entries of Rhodia merchandise made during the period of review. The Department will issue appraisement instructions for Rhodia merchandise directly to the Customs Service.

Furthermore, the following deposit rates will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(1) of the Act: (1) the cash deposit rate for Rhodia will be the rate established in the final results of this review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) for all other producers and/or exporters of this merchandise, the cash deposit rate shall be 60.0 percent, the ''all others'' rate established in the LTFV investigation (45 FR 77498, November 24, 1980). This deposit rate, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this determination in accordance with sections 751(a)(1) and 777(i)(1) of the Act

Dated: August 3, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01–20105 Filed 8–9–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–810]

Mechanical Transfer Presses From Japan: Notice of Final Results of Changed Circumstances Review, and Revocation in Part of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On July 10, 2001, the Department of Commerce (''the Department'') published a notice of initiation and preliminary results of a changed circumstances review with the intent to revoke, in part, the antidumping duty order on mechanical transfer presses from Japan, as it pertains to certain large, hot-forging presses. *See Mechanical Transfer Presses From Japan: Notice of Initiation and Preliminary Results of Changed Circumstances Review of the Antidumping Order and Intent to Revoke Order in Part,* 66 FR 35932 (July 10, 2001) (*Initiation and Preliminary Results*). In the *Initiation and Preliminary Results,* we gave interested parties an opportunity to comment; we did not receive, however, any comments on the preliminary results. We are now revoking this order, in part, based on the fact that domestic parties have expressed no interest in the continuation of the order as it pertains to the large, hot-forging presses described below.

EFFECTIVE DATE: August 10, 2001.

FOR FURTHER INFORMATION CONTACT: Mark Hoadley, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0666.

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. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations as codified at 19 CFR Part 351 (2000).

SUPPLEMENTARY INFORMATION:

Background

On May 3, 2001, Sumitomo Heavy Industries, Ltd. (Sumitomo) requested that the Department partially revoke the antidumping duty order on mechanical transfer presses from Japan. Specifically, Sumitomo requested that the Department revoke the order as it pertains to imports meeting the following specifications: automatic forging presses within the current scope of the order, which operate at a forging temperature of 900 degrees centigrade or higher, and which have a capacity of 1600 metric tons or greater.

Sumitomo is a foreign producer of the products in question. Attached to its request, Sumitomo submitted two letters from the only two domestic parties claiming to be producers of subject merchandise, Enprotech Mechanical Services, Inc. (Enprotech) and IHI-Verson Press Technology, LLC. (Verson), stating that they did not oppose excluding large, hot-forging presses, as defined above, from the scope of the order. On June 11, 2001, we sent letters to all three domestic interested parties who have expressed an interest in this proceeding, the two domestic producers noted above and the International Union, United Auto Workers, requesting comments by June 15, 2001, either supporting or objecting to the partial revocation. We received no comments in opposition to the changed circumstances review or the partial revocation, and subsequently issued our preliminary determination to revoke the order in part in combination with the initiation of the changed circumstances review. We gave interested parties until July 24, 2001, to comment on the Initiation and Preliminary Results. We received no comments on our preliminary results.

Scope of Changed Circumstances Review

Imports covered by the order include MTPs currently classifiable under Harmonized Tariff Schedule (HTSUS) item numbers 8462.99.0035 and 8466.94.5040. The HTSUS subheadings

are provided for convenience and Customs purposes only. The written description of the scope of this order is dispositive. The term ''mechanical transfer presses'' refers to automatic metal-forming machine tools with multiple die stations in which the work piece is moved from station to station by a transfer mechanism designed as an integral part of the press and synchronized with the press action, whether imported as machines or parts suitable for use solely or principally with these machines. These presses may be imported assembled or unassembled. This review does not cover certain parts and accessories, which were determined to be outside the scope of the order. (See ''Final Scope Ruling on Spare and Replacement Parts,'' U.S. Department of Commerce, March 20, 1992; and ''Final Scope Ruling on the Antidumping Duty Order on Mechanical Transfer Presses (MTPs) from Japan: Request by Komatsu, Ltd.,'' U.S. Department of Commerce, October 3, 1996.)

Final Results of Review; Partial Revocation of Antidumping Duty Order

The affirmative statement by domestic producers of no opposition to excluding the large, hot-forging presses described above constitutes changed circumstances sufficient to warrant partial revocation of this order. In addition, no party commented on the *Initiation and Preliminary Results.* Therefore, the Department is partially revoking the order on mechanical transfer presses from Japan as it pertains to products which meet the specifications detailed above, in accordance with sections 751(b) and (d) and 782(h) of the Act and 19 CFR 351.216(d)(1). We will instruct the U.S. Customs Service (''Customs'') to liquidate without regard to antidumping duties, as applicable, and to refund any estimated antidumping duties collected for all unliquidated entries of mechanical transfer presses meeting the specifications indicated above, and not subject to final results of an administrative review, as of the date of publication in the **Federal Register** of these final results in accordance with 19 CFR 351.222. We will also instruct Customs to pay interest on such refunds in accordance with section 778 of the Act.

This notice serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.306. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This changed circumstances review, partial revocation of the antidumping duty order, and notice are in accordance with sections 751(b) and (d) and 782(h) of the Act and sections 351.216 and 351.222(g) of the Department's regulations.

Dated: August 3, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01–20106 Filed 8–9–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 080701B]

Proposed Information Collection; Comment Request; Northwest Region Vessel Identification Requirements

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506 (c)(2)(A)).

DATES: Written comments must be submitted on or before October 9, 2001.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at MClayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to William L. Robinson, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115 (phone 206–526–6140).

SUPPLEMENTARY INFORMATION:

I. Abstract

The success of fisheries management programs depends significantly on regulatory compliance. The vessel identification requirement is essential to facilitate enforcement. The ability to link fishing or other activity to the vessel owner or operator is crucial to enforcement of regulations issued under the authority of the Magnuson Fishery Conservation and Management Act. A vessel's official number (or international radio call sign—IRCS-—if a foreign vessel), is required to be displayed on the port and starboard sides of the deckhouse or hull, and on a weather deck. It identifies each vessel and should be visible at distances at sea and in the air. Vessels that qualify for particular fisheries are readily identified, gear violations are more readily prosecuted, and this allows for more cost-effective enforcement. Cooperating fishermen also use the number to report suspicious activities that they observe. Regulation-compliant fishermen ultimately benefit as unauthorized and illegal fishing is deterred and more burdensome regulations are avoided.

II. Method of Collection

Fishing vessel owners physically mark vessel with identification numbers in three locations per vessel.

III. Data

OMB Number: 0648–0355.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations (fishermen in the Open Access and Limited Entry Pacific Coast Groundfish Fishery).

Estimated Number of Respondents: 1,984.

Estimated Time Per Response: 45 minutes (15 minutes per marking.

Estimated Total Annual Burden Hours: 1,488 hours.

Estimated Total Annual Cost to Public: $69,440 ($35 per vessel).

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection;

they also will become a matter of public record.

Dated: August 3, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–20115 Filed 8–9–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 080701C]

Proposed Information Collection; Comment Request; Survey of Intent and Capacity to Harvest and Process Fish and Shellfish (Northwest Region)

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506 (c)(2)(A)).

DATES: Written comments must be submitted on or before October 9, 2001.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at MClayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to William L. Robinson, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115 (phone 206–526–6140).

SUPPLEMENTARY INFORMATION:

I. Abstract

Telephone interviews have been used by NMFS to determine the amounts and species of fish that would not be used by domestic processors and could be made available to foreign and joint venture operations. Pacific whiting, the species most recently utilized by to foreign and joint venture operations, became fully utilized by domestic processors in 1991. However, minor opportunities for joint venture processing of shortbelly rockfish and jack mackerel continued to exist. In December 2000, the West Coast groundfish resource was declared to be fully utilized by domestic fisheries. The supporting groundfish regulations at 50 CFR 660.303 (a) were revised to reflect this change.

Telephone interviews continue to be necessary to determine the intent and capacity of the various sectors of the domestic fleet to harvest and process Pacific whiting. Each year the Pacific whiting optimum yield is divided between the treaty Indian tribes on the coast of Washington State and the three sectors of the non-tribal commercial fisheries (motherships, catcher/processors, and shore-base processor). If it is determined that a sector will be unable to use all of their allocation before the end of the fishing year, NMFS may reapportion whiting to the other sectors to ensure full utilization of the resource. Therefore, information collected from the groundfish industry in telephone interviews continues to be valuable and important in groundfish management.

II. Method of Collection

Telephone interview.

III. Data

OMB Number: 0648–0243.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations (owners or operators of vessels that catch or process fish in ocean waters 0–200 nautical miles offshore Washington, Oregon, and California).

Estimated Number of Respondents: 60.

Estimated Time Per Response: 5 minutes.

Estimated Total Annual Burden Hours: 5 hours.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 3, 2001.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 01–20116 Filed 8–9–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 080701E]

Proposed Information Collection; Comment Request; Northeast Region Gear Identification Requirements

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506 (c)(2)(A)).

DATES: Written comments must be submitted on or before October 9, 2001.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at MClayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to William L. Robinson, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115 (phone 206–526–6140).

SUPPLEMENTARY INFORMATION:

I. Abstract

The success of fisheries management programs depends significantly on regulatory compliance. Requirements that fishing gear be marked are essential to facilitate enforcement. The ability to link fishing gear to the vessel owner or operator is crucial to enforcement of regulations issued under the authority of the Magnuson Fishery Conservation and Management. The marking of fishing gear is also valuable in actions concerning damage, loss, and civil

proceedings. The regulations specify fishing gear must be marked with the vessel's official number, federal permit or tag number, or some other specified form of identification. The regulations further specify how the gear is to be marked, e.g., location and color. Law enforcement personnel rely on this information to assure compliance with fisheries management regulations. Gear that is not properly identified is confiscated. The identifying number on fishing gear is used by NMFS, the U.S. Coast Guard, and other marine agencies in issuing violations, prosecutions, and other enforcement actions. Gear marking helps ensure that a vessel harvests fish only from its own traps/pots/other gear and that traps/pots/other gear are not illegally placed. Gear violations are more readily prosecuted when the gear is marked, allowing for more cost-effective enforcement. Cooperating fishermen also use the number to report placement or occurrence of gear in unauthorized areas. Regulation-compliant fishermen ultimately benefit as unauthorized and illegal fishing is deterred and more burdensome regulations are avoided.

II. Method of Collection

The physical marking of fishing buoys is done by the affected public (fishermen in the Pacific Coast Groundfish Fishery) according to regulation.

III. Data

OMB Number: 0648–0352.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Business or other for-profit organizations (fishermen in the Pacific Coast Groundfish Fishery).
Estimated Number of Respondents: 1,033.
Estimated Time Per Response: 15 minutes per marking (with an average of 11.6 buoy markings per vessel).
Estimated Total Annual Burden Hours: 3,002.
Estimated Total Annual Cost to Public: $4,503.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 3, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–20118 Filed 8–9–01; 8:45 am]
BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 010723185–1185–01]

Nominations for Federal Advisory Committee on Marine Protected Areas

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of request for nominations.

SUMMARY: The Department of Commerce is establishing a Federal Advisory Committee on Marine Protected Areas (MPA) pursuant to Executive Order 13158 and is seeking nominations for membership on this Committee.

DATES: Nominations must be postmarked on or before September 15, 2001.

ADDRESSES: Nominations should be sent to Office of Ocean and Coastal Resource Management, NOAA, 1315 East-West Highway, Silver Spring, MD 20910 ATTN: Federal Advisory Committee on Marine Protected Areas.

FOR FURTHER INFORMATION CONTACT: Roger Griffis, NOAA, (301) 713–3155 Extension 104. E-mail: Roger.B.Griffis@noaa.gov.

SUPPLEMENTARY INFORMATION: On June 4, 2001, Secretary of Commerce Donald L. Evans released a statement announcing the Administrations's retention of Executive Order 13158. The Secretary also announced his intention to appoint a Marine Protection Area Advisory Committee. To complete this task the Secretary has decided to seek nominations in addition to those previously solicited (see 65 FR 50503, August 18, 2000) and initiate a review of all nominees.

Executive Order 13158 directs the Department of Commerce and the Department of the Interior to seek the expert advice and recommendations of non-Federal scientists, resource managers, and other interested persons and organizations through a Marine Protected Areas Federal Advisory Committee. The Advisory Committee will provide advice and recommendations to the Secretary of Commerce and the Secretary of the Interior to focus Federal Government efforts to develop information about existing MPAs, to help identify areas where research may support management of marine resources through MPAs, and to undertake other appropriate MPA activities. The terms of Executive Order 13158 make clear that it is not intended to supplant existing statutory authorities or to create new legal authority to regulate marine resources. Activities conducted under Executive Order 13158 will be consistent with current law. The MPA Advisory Committee will be established through a public process that will ensure the Administration will benefit from a broad, balanced range of expertise and views as it undertakes MPA-related activities. Initial committee members will be selected for two or three year terms of service. The Committee will meet at least once annually; however, members of subcommittees, task forces, and/or working groups established by the Committee may meet on a more frequent basis. Members of the Committee will not be compensated, but may be allowed travel and per diem expenses.

The Department of Commerce is seeking a diverse group of approximately 25 highly qualified individuals to serve on the Marine Protected Areas Federal Advisory Committee. Nominations are sought for non-Federal scientists, resource managers, and persons representing other interests or organizations. Individuals seeking membership on the Advisory Committee should possess demonstrable expertise in a field related to MPAs and/or an interest affected by MPAs. Nominees will also be considered based on their ability to contribute to a balance of interests and points of view.

Nominations are encouraged from all interested parties, such as scientific societies; academic and research institutions; groups or governments representing Native Americans, Alaska Natives, Native Hawaiians, Caribbean Islanders and Pacific islanders; states, territories and localities; interest groups such as the fishing (recreational and commercial), boating, diving, recreational, maritime, historical and philanthropic communities; conservation organizations; mineral and

oil production interests; and Federal agencies.

Note: No Federal agency employees may be appointed to serve on the Committee, but nominations for non-federal employees will be accepted from Federal agencies.

All nominations received during the prior nomination period (August–October, 2000) will be considered along with any new nominations received during the second nomination period, unless a nominee withdraws his or her application. No additional submission is required for those nominees from the prior nomination period. Any nominee from the prior nomination period however, may submit new information to update his or her file. All nominations will be treated equally during the review and selection process.

Each submission should include the following material to be considered for review: The submitting person or organization's name and affiliation; a cover letter describing the nominee's qualifications and interest in serving on the Committee; a Curriculum Vitae or resume of nominee; and the nominee's name, address, phone number, fax number, and e-mail address. Self-nominations are acceptable. Letters of support describing the nominee's qualifications are optional and no more than three supporting letter(s) will be accepted.

Nominations should be sent to (see **ADDRESSES**) and nominations must be postmarked on or before September 15, 2001. The full text of the executive order can be found at the following website address: *www.mpa.gov.*

Dated: August 6, 2001.

Alan Neuschatz,

Chief Financial Officer/Chief Administrative Officer, Ocean Services and Coastal Zone Management.

[FR Doc. 01–20067 Filed 8–9–01; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Establishment of the Deterrence Concepts Advisory Group

AGENCY: Department of Defense.

ACTION: Notice of establishment.

SUMMARY: The Deterrence Concepts Advisory Group is being established in accordance with the provisions of the Public Law 92–463, the ''Federal Advisory Committee Act,'' Title 5 U.S.C., Appendix 2.

The Deterrence Concepts Advisory Group is established to provide advice and recommendations to advance the U.S. position as a strong, secure and persuasive force for freedom and progress in the world, and to do so at the lowest nuclear force level consistent with security requirements.

The Panel will be composed of no more than 10 members selected on the basis of their expertise in the fields of nuclear deterrence and security. In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended, 5 U.S.C. App II 1982, it has been determined that the committee meetings concern matters listed in 5 U.S.C. 552B(c)(1), and that accordingly the meetings will be closed to the public.

Notice of the establishment of this new committee is being published in less than the 15 days, due to the urgent need to convene this committee so that its advice on a matter of extraordinary importance may be provided to the Secretary of Defense in a timely manner. A waiver of the 15 day notice requirement for establishment of a new committee has been approved.

FOR FURTHER INFORMATION CONTACT: Lauren Haber, Office of the Secretary of Defense for Policy, (703) 697–0286.

Dated: August 3, 2001.

Particia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01–20051 Filed 8–9–01; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Deterrence Concepts Advisory Group Meeting

AGENCY: Department of Defense.

ACTION: Notice of advisory committee meeting.

SUMMARY: the Deterrence Concepts Advisory Group met in closed session on August 8, 2001. The committee was established to provide advice and recommendations to the Secretary of Defense on advancing a strong, secure, and persuasive U.S. force for freedom and progress in the world, and do so at the lowest force level consistent with security requirements.

In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App II (1982)), it was determined that the committee meeting concerned matters sensitive to the interest of national security, listed in 5 U.S.C. 552B(c)(1) (1982) and accordingly this meeting was closed to the public.

This notice is being published in less than the 15 days required by law, due to the urgent need for this committee to begin its activities so that its advice on a matter of extraordinary importance may be provided to the Secretary of Defense in a timely manner.

DATES: August 8, 2001, 10:30 a.m.

ADDRESSES: The Pentagon, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lauren Haber, Office of the Under Secretary of Defense for Policy, 703–697–0286.

Dated: August 3, 2001.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01–20050 Filed 8–9–01; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Proposed Collection; Comment Request

AGENCY: Air Force Institute for Environment, Safety & Occupational Health Risk Analysis (AFIERA), DOD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Air Force Institute for Environment, Safety & Occupational Health Risk Analysis announces the proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms or information technology.

DATES: Consideration will be given to all comments received October 9,2001.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to Air Force Institute for Environment, Safety & Occupational Health Risk Analysis, AFIERA/DOS, 2513 Kennedy Circle, Brooks AFB TX 78235.

FOR FURTHER INFORMATION CONTACT: To request more information on this

proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call the Air Force Institute for Environment, Safety & Occupational Health Risk Analysis Information Systems Division at 210–536–2484.

Title: Air Force Institute for Environment, Safety & Occupational Health Risk Analysis Customer Feedback.

Needs and Uses: The Air Force Institute for Environment, Safety & Occupational Health Risk Analysis is requesting feedback from its customers to better serve their needs. Their opinions will help AFIERA to improve its processes which in turn will improve the products and services provided to them.

Affected Public: Individuals (18 years and older) visiting the AFIERA public web-site and voluntarily accessing the link to the feedback form.

Annual Burden Hours: Varies.

Number of Respondents: Unlimited.

Responses Per Respondent: Varies.

Average Burden Per Response: 5 Minutes.

Frequency: As often as customers request.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The Air Force Institute for Environment, Safety & Occupational Health Risk Analysis provides a number of products and services to Air Staff, MAJCOM, Air Force bases, Air Force Reserve Units, and Air National Guard units worldwide. These include collecting and analyzing environmental, safety and health data to protect people and the environment, providing scientific and engineering assistance in air and water quality monitoring, hazardous waste identification and disposal, treatment techniques, consultative support in environmental compliance, and supplementary diagnostic testing services. This survey collects customer satisfaction with the products and services and their feelings toward the Air Force Institute for Environment, Safety & Occupational Health Risk Analysis.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 01–20095 Filed 8–9–01; 8:45 am]

BILLING CODE 3910–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 9, 2001.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: August 6, 2001.

John Tressler,

Leader Regulatory Information Management, Office of the Chief Information Officer.

Office of Student Financial Assistance Programs

Type of Review: Revision.

Title: Federal Perkins/National Direct Student Loan (NDSL) Assignment Form.

Frequency: On occasion.

Affected Public: Not-for-profit institutions; Businesses or other for-profit; Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 21,262.

Burden Hours: 10,631.

Abstract: This form is used to collect pertinent data regarding defaulted student loans from institutions participating in the Federal Perkins Loan Program. The ED Form 553 serves as the transmittal document in the assignment of such defaulted loans to the Federal government for collection.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346.

Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his internet address Joe.Schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 01–20066 Filed 8–9–01; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Pantex

AGENCY: Department of Energy.

ACTION: Notice of open meeting; change in date and place of advisory board meeting.

SUMMARY: This notice announces a change in the date and place of the Environmental Management Site-Specific Advisory Board (EMSSAB), Pantex, meeting.

DATES: Meeting date: Tuesday, August 21, 2001, 1 p.m. to 5 p.m.

ADDRESSES: Meeting location: Carson County Square House Museum, Highway 207, Panhandle, TX.

FOR FURTHER INFORMATION CONTACT: Jerry S. Johnson, Assistant Area Manager, Department of Energy, Amarillo Area Office, P.O. Box 30030, Amarillo, TX 79120; phone (806) 477–3125; fax (806)

477–5896 or e-mail *jjohnson@pantex.gov.*

Issued at Washington, D.C. on August 6, 2001.

Belinda G. Hood,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 01–20079 Filed 8–9–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board Chairs Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB) Chairs Meeting. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meeting be announced in the **Federal Register**.

DATES: August 27–August 29, 2001.

ADDRESSES: Santa Fe Hilton, 100 Sandoval Street, Santa Fe, New Mexico 87501.

FOR FURTHER INFORMATION CONTACT: Barbara Harrelson, Northern New Mexico Citizens' Advisory Board, 1660 Old Pecos Trail, Suite B, Santa Fe, NM 87505. Phone (505) 989–1662 or 1–800–218–5942; Fax (505) 989–1752 or e-mail: *bharrelson@doeal.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board

The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

Sunday, August 26

2:00–5:00 p.m.—Registration, outside of Mesa Ballroom.
5:00–7:00 p.m.—Opening reception, Frederic Vigil's Galleria de Pintor, 1107 Canyon Road.

Monday, August 27

7:30–8:30 a.m.—Registration, outside of Mesa Ballroom.
8:30–9:00 a.m.—Welcome and Introductions.
9:00–10:15 a.m.—Message from Jessie Roberson and Discussion of the Top-Down Review.
10:30–11:30 a.m.—Round Robin Reports from all Chairs on Current Issues and Concerns.
11:30–12:45 p.m.—Lunch.
12:45–2:00 p.m.—Waste Disposition Maps.
2:15–3:30 p.m.—DOE's Cleanup Budget.
3:45–5:15 p.m.—SSAB Input to DOE's Cleanup Budget.
5:15–5:30 p.m.—Public Comment.

Tuesday, August 28

8:30–8:45 a.m.—Review of the First Day, Orientation to Second Day.
8:45–10:15 a.m.—Scope of the SSABs and their Relationship with DOE.
10:30–11:15 a.m.—Upcoming SSAB Groundwater Workshop.
11:15–12:15 p.m.—Previous Workshops, Future Workshops.
12:15–1:30 p.m.—Lunch.
1:30–3:00 p.m.—DOE's Responses to SSAB Recommendations/Advice and Factors that Contribute to SSAB Effectiveness.
3:00–3:15 p.m.—Public Comment.
3:15–3:30 p.m.—Next Steps & Meeting Evaluation.

Wednesday, August 29

8:30 a.m.–4:30 p.m.—Choice of all day tour to Los Alamos which includes the Los Alamos National Laboratory, walking tour of downtown Los Alamos and areas affected by the 2000 Cerro Grande Fire or half-day tour which includes Los Alamos National Laboratory.

Thursday, August 30

Waste Isolation Pilot Plant Tour is available

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Barbara Harrelson at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments at the end of the meeting.

Minutes

Minutes of this meeting will be available for public review and copying at the Department of Energy's Information Resource Center at 1660 Old Pecos Trail, Suite B, Santa Fe, New Mexico, 87505 between 7:30 a.m. and 5:30 p.m. Monday through Friday, or by writing or calling Barbara Harrelson at the address or telephone number listed above.

Issued at Washington, DC on August 6, 2001.

Belinda G. Hood,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 01–20080 Filed 8–9–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

Longview Energy Development Project

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of availability of Record of Decision (ROD).

SUMMARY: This notice announces the availability of the ROD to offer contract terms for integrating power from Longview Energy Development LLC (LED) into the Federal Columbia River Transmission System. This decision is based on input from public processes and information in the BPA Business Plan Environmental Impact Statement (DOE/EIS–0183, June 1995) and the Business Plan ROD (August 15, 1995). The LED project is a 290-megawatt gas-fired, combined-cycle, combustion-turbine power generation project, which will help meet the immediate need for energy resources of the region and serve as a resource to meet demand in the long term.

ADDRESSES: Copies of the LED ROD, Business Plan, and Business Plan EIS and ROD may be obtained by calling BPA's toll-free document request line: 1–800–622–4520.

FOR FURTHER INFORMATION CONTACT: Phil Smith, KEC–4, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon, 97208–3621, telephone number 503–230–3294; fax number 503–230–5699; e-mail *pwsmith@bpa.gov.*

Issued in Portland, Oregon, on July 31, 2001.

Stephen J. Wright,

Acting Administrator and Chief Executive Officer.

[FR Doc. 01–20078 Filed 8–9–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–2726–000]

Big Sandy Peaker Plant, LLC; Notice of Filing

August 3, 2001.

Take notice that on July 30, 2001, Big Sandy Peaker Plant, LLC (Big Sandy) tendered for filing an umbrella service agreement for short-term power sales by Big Sandy to Constellation Power Source, Inc.

Big Sandy requests that the agreement become effective on June 7, 2001.

Any person desiring to be heard or to protest such filing should file a motion intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before August 20, 2001. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–20085 Filed 8–9–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MG01–24–000]

Columbia Gas Transmission Company; Notice of Filing

August 6, 2001.

On July 24, 2001, Columbia Gas Transmission Company filed revised standards of conduct.

Columbia Gas Transmission Company states that it served copies of the filing on all customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest in this proceeding with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, D.C., 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before August 21, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the 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. 01–20059 Filed 8–9–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MG01–27–000]

Columbia Gulf Transmission Company; Notice of Filing

August 6, 2001.

On July 24, 2001, Columbia Gulf Transmission Company filed revised standards of conduct.

Columbia Gulf Transmission Company states that it served copies of the filing on all customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest in this proceeding with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, D.C., 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before August 21, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the 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. 01–20062 Filed 8–9–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MG01–25–000]

Crossroads Pipeline Company; Notice of Filing

August 6, 2001.

On July 24, 2001, Crossroads Pipeline Company filed revised standards of conduct.

Crossroads Pipeline Company states that it served copies of the filing on all customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest in this proceeding with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before August 21, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the 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. 01–20060 Filed 8–9–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MG01–23–000]

Florida Gas Transmission Company; Notice of Filing

August 6, 2001.

Take notice that on July 24, 2001, Florida Gas Transmission Company filed revised standards of conduct.

Florida Gas Transmission Company states that it served copies of the filing on all customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest in this proceeding with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before August 21, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the 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. 01–20058 Filed 8–9–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MG01–26–000]

Granite State Gas Transmission Company; Notice of Filing

August 6, 2001.

On July 24, 2001, Granite State Gas Transmission Company filed revised standards of conduct.

Granite State Gas Transmission states that it served copies of the filing on all customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest in this proceeding with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before August 21, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the 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. 01–20061 Filed 8–9–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2047–004 et al.]

Niagara Power Corporation et al.; Notice of Meeting for the Upper Hudson River Projects DEIS

August 6, 2001.

a. Date and Time of Meeting: August 29, 2001, 7 pm to 9 pm.

b. Place: Town Hall, Town of Hadley, 4 Stony Creek Road, Hadley, New York 12835.

c. FERC Contact: Lee Emery (202) 219–2779; e-mail at lee.emery@ferc.fed.us.

d. Purpose of the Meeting: To summarize the conclusions reached in the Draft Multiple Project Environmental Impact Statement (DEIS) issued by the Federal Energy Regulatory Commission (Commission) on May 18, 2001, for the Upper Hudson River Projects and to give the public an opportunity to ask questions about the content and conclusions of that DEIS. The hydroelectric projects included in the DEIS are the E.J. West (FERC Project No. 2318–002), Stewarts Bridge (FERC Project No. 2047–004), Hudson River (FERC Project No. 2482–014), and Feeder Dam (FERC Project No. 2554–003) projects located on the Sacandaga and Hudson rivers in Saratoga, Fulton, Warren, and Hamilton counties, New York. All the projects are currently licensed to Erie Boulevard Hydropower, L.P.

David P. Boergers,

Secretary.

[FR Doc. 01–20063 Filed 8–9–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–2725–000]

University Park Energy, LLC; Notice of Filing

August 3, 2001.

Take notice that on July 30, 2001, University Park Energy, LLC (University Park) tendered for filing a Test Power Purchase Agreement for short term power sales by University Park to Exelon Generating Company, LLC.

University Park requests that the Agreement become effective on May 15, 2001.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before August 20, 2001. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are

available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–20086 Filed 8–9–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC01–131–000, et al.]

Conectiv Energy, Inc., et al. Electric Rate and Corporate Regulation Filings

August 3, 2001.

Take notice that the following filings have been made with the Commission:

1. Conectiv Energy, Inc., Conectiv Delmarva Generation, Inc.

[Docket No. EC01–131–000]

Take notice that on July 26, 2001, Conectiv Energy, Inc. (CEI) and Conectiv Delmarva Generation, Inc. (CDG) jointly filed an application pursuant to Section 203 of the Federal Power Act for authorization of the sale by CEI to CDG of jurisdictional transmission facilities appurtenant to four generating units that CEI is also selling to CDG. The four generating units are Hay Road 5, Hay Road 6, Hay Road 7 and Hay Road 8. Hay Road 6 and Hay Road 7 are currently operational, while Hay Road 5 and Hay Road 8 are currently under construction. The total generating capacity of all the units will be 550 MW when construction is completed.

A copy of the filing has been served on the Delaware Public Service Commission.

Comment date: August 16, 2001, in accordance with Standard Paragraph E at the end of this notice.

2. Edison Mission Energy

[Docket No. EC01–133–000]

Take notice that on July 27, 2001, Edison Mission Energy (Applicant), acting on behalf of its public utility subsidiaries, filed with the Federal Energy Regulatory Commission (Commission) an application pursuant to section 203 of the Federal Power Act for authorization of a transfer of indirect control of jurisdictional facilities, arising from the proposed reincorporation of the Applicant under the laws of the State of Delaware. Applicant explained that the proposed transaction brings it within the same corporate governance regime as its parent, Mission Energy Holding Company, and will have no effect on competition, rates, or regulation and is consistent with the public interest.

Comment date: August 17, 2001, in accordance with Standard Paragraph E at the end of this notice.

3. Duke Energy Moss Landing, LLC, Duke Energy Morro Bay, LLC, Duke Energy Oakland, LLC, Duke Energy South Bay, LLC, Duke Energy Trading & Marketing, LLC

[Docket Nos. ER98–2680–000, ER98–2680–002, ER98–3418–000, ER98–2681–000, ER98–2681–002, ER98–3417–000, ER98–2682–000, ER98–2682–002, ER98–3416–000, ER99–1785–000, ER99–1785–001 and ER99–2774–000]

Take notice that on July 19, 2001, a filing was made to correct the docket numbers of several recent filings made by Duke Energy Moss Landing, LLC, Duke Energy Morro Bay, LLC, Duke Energy Oakland, LLC, Duke Energy South Bay, LLC, and Duke Energy Trading & Marketing, LLC, (collectively Duke Energy). Duke Energy's instant submittal contains the filings it made June 8, June 22, June 25 and July 11, 2001, with clearly marked, yellow, errata sheets identifying the correct docket numbers. Duke Energy originally made the four filings under Docket Nos. ER98–2860, ER98–2861, and ER98–2862. However, the 6 and 8 in the docket nos. were transposed. The correct dockets are ER98–2680, ER98–2681, and ER98–2682.

Comment date: August 15, 2001, in accordance with Standard Paragraph E at the end of this notice.

4. Southern Company Services, Inc.

[Docket No. ER01–1698–004]

Take notice that on July 31, 2001, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (Savannah Electric) (collectively referred to as Southern Company), filed an amendment to its compliance filing to the Commission's Order in *Southern Company Services, Inc.,* 95 FERC ¶ 61,307. In that order, the Commission accepted for filing an unexecuted Interconnection Agreement between Savannah Electric and Effingham County Power LLC. In addition, the Commission also ordered that Southern Company amend its Interconnection Procedure to make certain revisions to the scope of Interconnection Studies that it performs. The Compliance Filing was made on June 29, 2001. The Amendment to that Compliance Filing expands the scope of the Interconnection Studies available to Interconnection Customers.

Comment date: August 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

5. American Electric Power Service Corporation

[Docket No. ER01–1900–001]

Take notice that on July 27, 2001, the American Electric Power Service Corporation (AEPSC) tendered for filing an amended Interconnection and Operation Agreement between Columbus Southern Power Company and Duke Energy Franklin LLC. This filing is made in compliance with the Commission's Order Conditionally Accepting Unexecuted Interconnection and Operation Agreement issued in this docket on June 28, 2001, 95 FERC ¶ 61,472 (2001). 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 June 25, 2001.

A copy of the filing was served upon the Ohio Public Utilities Commission.

Comment date: August 17, 2001, in accordance with Standard Paragraph E at the end of this notice.

6. Desert Power, L.P.

[Docket No. ER01–2071–001]

Take notice that on July 31, 2001, Desert Power, L.P. submitted for filing a substitute tariff sheet to its FERC Electric Tariff, Original Volume No. 1 pursuant to a letter order issued July 16, 2001 in Docket No. ER01–2071–000.

Comment date: August 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

7. Virginia Electric and Power Company

[Docket No. ER01–2362–000]

Take notice that on July 31, 2001, Virginia Electric and Power Company tendered for filing a letter requesting that the Commission defer further consideration of its filing of two unexecuted interconnection agreements with Old Dominion Electric Cooperative pending further negotiations to resolve the outstanding issue.

Comment date: August 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

8. PacifiCorp

[Docket No. ER01–2525–001]

Take notice that on July 31, 2001, PacifiCorp tendered for filing with the Federal Energy Regulatory Commission (Commission) in accordance with Part 35 of the Commission's Rules and Regulations, 18 CFR Part 35, a complete copy of a Long-Term Firm Transmission Service Agreement with PacifiCorp Power Marketing (PPM) under PacifiCorp's FERC Electric Tariff, Second Revised Volume No. 11 (Tariff).

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: August 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

9. Idaho Power Company

[Docket No. ER01–2711–000]

Take notice that on July 27, 2001, Idaho Power Company filed a Network Service Agreement for Network Integration Transmission Service, and a Network Operating Agreement, between Idaho Power Company and PacifiCorp, under its open access transmission tariff in the above-captioned proceeding.

Comment date: August 17, 2001, in accordance with Standard Paragraph E at the end of this notice.

10. Progress Energy Inc., on behalf of Carolina Power & Light Company

[Docket No. ER01–2724–000]

Take notice that on July 30, 2001, Carolina Power & Light Company (CP&L) tendered for filing an executed Service Agreement between CP&L and the following eligible buyer, Williams Energy Marketing & Trading Company. Service to this eligible buyer will be in accordance with the terms and conditions of CP&L's Market-Based Rates Tariff, FERC Electric Tariff No. 4, for sales of capacity and energy at market-based rates.

CP&L requests an effective date of July 27, 2001 for this Service Agreement.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: August 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

11. University Park Energy, LLC

[Docket No. ER01–2725–000]

Take notice that on July 30, 2001, University Park Energy, LLC (University Park) tendered for filing a Test Power Purchase Agreement for short term power sales by University Park to Exelon Generating Company, LLC.

University Park requests that the Agreement become effective on May 15, 2001.

Comment date: August 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

12. Big Sandy Peaker Plant, LLC

[Docket No. ER01–2726–000]

Take notice that on July 30, 2001, Big Sandy Peaker Plant, LLC (Big Sandy) tendered for filing an umbrella service agreement for short-term power sales by Big Sandy to Constellation Power Source, Inc.

Big Sandy requests that the agreement become effective on June 7, 2001.

Comment date: August 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

13. American Transmission Company LLC

[Docket No. ER01–2727–000]

Take notice that on July 30, 2001, American Transmission Company LLC (ATCLLC) tendered for filing an executed Distribution-Transmission Interconnection Agreement between ATCLLC and Upper Peninsula Power Company.

ATCLLC requests an effective date of June 29, 2001.

Comment date: August 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

14. Tenaska Georgia Partners, L.P.

[Docket No. ER01–2728–000]

Take notice that on July 30, 2001, Tenaska Georgia Partners, L.P., 1044 North 115 Street, Suite 400, Omaha, Nebraska 68154 (Tenaska Georgia), filed with the Federal Energy Regulatory Commission the Power Purchase Agreement between Tenaska Georgia and PECO Energy Company (PECO) dated as of August 24, 1999 (PPA). The filing is made pursuant to Tenaska Georgia's authority to sell power at market-based rates under its Market-Based Rate Tariff, Rate Schedule FERC No. 1, Original Volume No. 1, approved by the Commission on July 28, 1999 in Docket No. ER99–3165–000.

Comment date: August 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

15. Alcoa Power Generating Inc.

[Docket No. ER01–2729–000]

Take notice that on July 30, 2001, Alcoa Power Generating Inc. (APGI) tendered for filing with the Commission a service agreement between Cinergy Services, Inc. (Cinergy) and APGI under APGI's Market Rate Tariff. This Tariff was accepted for filing by the Commission on July 13, 1999, in Docket No. ER99–2932–000.

The service agreement with Cinergy is proposed to be effective July 1, 2001.

Comment date: August 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

16. Southern Company Services, Inc.

[Docket No. ER01–2730–000]

Take notice that on July 30, 2001, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively Southern Companies), filed Amendment No. 1 to the Agreement for Network Integration Transmission Service and Complementary Services between the , Department of Energy, acting by and through the Southeastern Power Administration (SEPA), and SCS, as agent for Southern Companies. Amendment No. 1 modifies the amount of resources SEPA allocates to customers and the amount of network transmission service Southern Companies provide to SEPA. The Agreement is designated First Revised Rate Schedule FERC No. 392.

Comment date: August 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

17. Wolverine Power Supply Cooperative, Inc.

[Docket No. ER01–2731–000]

Take notice that on July 30, 2001, Wolverine Power Supply Cooperative, Inc. (Wolverine) tendered for filing an amendment to the Wolverine Open Access Transmission Tariff. The amendment adds procedures for interconnection of new generating facilities to the Wolverine transmission system or increasing the capacity of existing interconnected generating facilities. The procedures also include a pro forma Generator Interconnection and Operating Agreement. In addition, Wolverine proposes to add a pro forma Facilities Study Agreement and System Impact Study Agreement.

Copies of the filing were served on Wolverine's five wholesale power customers and the Michigan Public Service Commission.

Comment date: August 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

18. Perryville Energy Partners, LLC

[Docket No. ER01–2732–000]

Take notice that on July 31, 2001, Perryville Energy Partners, LLC tendered for filing with the Federal Energy Regulatory Commission (Commission), a Tolling Agreement between Perryville Energy Partners, LLC and Williams Energy Marketing & Trading. The filing is made pursuant to Perryville Energy Partners LLC's authority to sell power at market-based rates under its Market-Based Rates Tariff, FERC Electric Tariff Original Volume No. 1, approved by the Commission May 3, 2001 in Docket No. ER01–1397–000.

Comment date: August 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

19. Mid-Continent Area Power Pool

[Docket No. ER01–2733–000]

Take notice that on July 31, 2001, the Mid-Continent Area Power Pool, on behalf of its public utility members, filed short-term firm and non-firm service agreements under MAPP Schedule F with Tractebel Energy Marketing, Inc.; BP Energy Company; Associated Electric Cooperative, Inc.; and Lighthouse Energy Trading Company, Inc.

Comment date: August 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

20. PJM Interconnection, L.L.C.

[Docket No. ER01–2734–000]

Take notice that on July 31, 2001, PJM Interconnection, L.L.C. (PJM), filed amendments to Schedule 11 of the Reliability Assurance Agreement Among Load Serving Entities in The PJM Control Area (RAA) to include language inadvertently deleted from the RAA in amendments filed and approved in Docket No. EL01–63–000.

Copies of this filing were served upon all PJM members and each state electric utility regulatory commission in the PJM control area.

Comment date: August 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

21. PJM Interconnection, L.L.C.

[Docket No. ER01–2735–000]

Take notice that on July 31, 2001, PJM Interconnection, L.L.C. (PJM), on behalf of and at the request of Allegheny Electric Cooperative, Inc. (Allegheny) filed for acceptance or approval Allegheny's revenue requirement associated with the reactive power production of Allegheny's share of the Susquehanna Steam Electric Station to enable PJM, under the PJM Open Access Transmission Tariff, to collect this revenue requirement and to allocate to Allegheny an appropriate share of the revenues collected by PJM.

PJM, on behalf of Allegheny, requested a waiver of the Commission's notice requirement to allow an effective date for the collection of Allegheny's revenue requirement of August 1, 2001, or if the Commission cannot accommodate August 1, 2001, then September 1, 2001.

Copies of this filing were served upon all PJM members and each state electric utility regulatory commission in the PJM control area.

Comment date: August 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

22. Niagara Mohawk Power Corporation

[Docket No. ER01–2736–000]

Take notice that on July 30, 2001, Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing with the Federal Energy Regulatory Commission an extension of Rate Schedule No. 138 between Niagara Mohawk and the New York Power Authority (NYPA).

Niagara Mohawk requests an effective date of July 1, 2001.

Niagara Mohawk has served copies of the filing upon the New York State Public Service Commission, NYPA, the New York Independent System Operator and the New York State Electric & Gas Corporation.

Comment date: August 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

23. Southern California Edison Company

[Docket No. ER01–2737–000]

Take notice that on July 31, 2001, Southern California Edison Company (SCE) tendered for filing under SCE's Wholesale Distribution Access Tariff a Service Agreement for Wholesale Distribution Service and an Interconnection Facilities Agreement (collectively, Agreements) between SCE and The Wind Turbine Company (WTC).

These Agreements specify the terms and conditions under which SCE will interconnect WTC's generating facility to its electrical system and provide Distribution Service for up to 500 kW of power produced by the generating facility.

SCE respectfully requests the Agreements to become effective August 1, 2001.

Copies of this filing were served upon the Public Utilities Commission of the State of California and WTC.

Comment date: August 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

24. Entergy Services, Inc.

[Docket No. ER01–2738–000]

Take notice that on July 31, 2001, Entergy Services, Inc., 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 Non-Firm Point-To-Point Transmission Service Agreement and a Short-Term Firm Point-To-Point Transmission Service Agreement both between Entergy Services, Inc., as agent for the Entergy Operating Companies, and Exelon Generation Company, LLC.

Comment date: August 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

25. Entergy Services, Inc.

[Docket No. ER01–2739–000]

Take notice that on July 31, 2001, Entergy Services, Inc., 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 long-term Firm Point-To-Point Transmission Service Agreement between Entergy Services, Inc., as agent for the Entergy Operating Companies, and Exelon Generation Company, LLC.

Comment date: August 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

26. PPL Electric Utilities Corporation

[Docket No. ER01–2740–000]

Take notice that on July 30, 2001, PPL Electric Utilities Corporation (PPL Electric) filed with the Federal Energy Regulatory Commission an Interconnection Agreement between PPL Electric and Armstrong World Industries, Inc.

PPL Electric requests an effective date of July 16, 2001 for the Interconnection Agreement.

PPL Electric states that it has served a copy of this filing on Armstrong World Industries, Inc.

Comment date: August 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

27. Plains End, LLC

[Docket No. ER01–2741–000]

Take notice that on July 31, 2001, Plains End, LLC (Plains End) submitted for filing, pursuant to Section 205 of the Federal Power Act, and Part 35 of the Commission's regulations, an

application for authorization to make sales of capacity, energy, and certain Ancillary Services at market-based rates; to reassign transmission capacity; and to resell firm transmission rights (FTRs). Plains End proposes to construct a natural gas-fired power plant of approximately 113 MW capacity in Arvada, Colorado.

Comment date: August 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

28. Rock River I, LLC

[Docket No. ER01–2742–000]

Take notice that on July 30, 2001, Rock River I, LLC (Rock River) applied to the Commission for acceptance of Rock River's Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electric energy and capacity at market-based rates; and the waiver of certain Commission regulations. Rock River also submitted a long-term power purchase agreement between Rock River and PacifiCorp for acceptance as a service agreement under the market-based rate tariff.

Comment date: August 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

29. American Transmission Company LLC

[Docket No. ER01–2743–000]

Take notice that on July 31, 2001, American Transmission Company LLC (ATCLLC) tendered for filing a Firm and Non-Firm Point-to-Point Service Agreement between ATCLLC and Duke Energy Trading & Marketing.

ATCLLC requests an effective date of July 16, 2001.

Comment date: August 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

30. Mid-Continent Area Power Pool

[Docket No. ER01–2744–000]

Take notice that on July 31, 2001, the Mid-Continent Area Power Pool, on behalf of its public utility members, filed short-term firm and non-firm service agreements under MAPP Schedule F, FERC Electric Tariff, First Revised Volume No. 1, with TXU Energy Trading Company and Axia Energy, LP.

Comment date: August 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

31. Puget Sound Energy, Inc.

[Docket No. ER01–2745–000]

Take notice that on July 31, 2001, Puget Sound Energy, Inc. (PSE) tendered for filing a Second Revised Schedule 4 of its Open Access Transmission Tariff (''OATT''). The second revised Schedule 4 implements a market pricing mechanism for imbalance service.

PSE requests an effective date of October 1, 2001 for the filing.

A copy of the filing was served upon all parties in the above-referenced dockets.

Comment date: August 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

32. New Albany Power I, LLC

[Docket No. ER01–2746–000]

Take notice that on July 31, 2001, New Albany Power I, LLC (New Albany) filed a revision to its market-based rate schedule with changes clarifying the affiliate restrictions on sales of power and non-power goods. The revised rate schedule will go into effect when Enron North America Corp. consummates its upstream sale of New Albany's limited liability company interests to Duke Energy North America, LLC.

Comment date: August 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

33. Niagara Mohawk Power Corporation

[Docket No. ES01–34–001

Take notice that on July 25, 2001, Niagara Mohawk Power Corporation submitted an amendment to its original application in this proceeding, pursuant to section 204 of the Federal Power Act. The amendment is a revised certified resolution of Niagara Mohawk's Board of Directors authorizing the issuance of no more than $700 million in short-term debt.

Comment date: August 15, 2001, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–20057 Filed 8–9–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Scoping Meetings and Soliciting Scoping Comments

August 6, 2001.

Take notice the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New Major License.

b. *Project No.:* P–2835–005.

c. *Date Filed:* October 27, 2000.

d. *Applicant:* New York State Electric & Gas Corporation (NYSEG).

e. *Name of Project:* Rainbow Falls Hydroelectric Project.

f. *Location:* On the Ausable River, near the Rainbow Falls in the townships of Ausable and Chesterfield in Clinton and Essex counties, New York. The project would not utilize federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contacts:* Carol Howland, NYSEG, Corporate Drive—Kirkwood Industrial Park, P. O. Box 5224, Binghamton, NY 13902–5224; (607) 762–8881.

i. *FERC Contact:* Jarrad Kosa (202) 219–2831, or via e-mail at jarrad.kosa@ferc.fed.us.

j. *Deadline for Filing Scoping Comments:* December 2, 2001.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary; Federal Energy Regulatory Commission; 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the

official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Status of Environmental Analysis:* This application is not ready for environmental analysis at this time.

l. Description of the Project: The existing run-of-river Rainbow Falls Hydroelectric Project consists of the following facilities: (1) A 19-acre reservoir having a gross storage capacity of 234 acre-feet at 310 above mean sea level (msl); (2) a 19-foot-high by 435-foot-long concrete gravity dam having (i) 3-foot-high flashboards and (ii) a concrete 345-foot-long spillway between the dam abutments with an average height of 16 feet and an average width of 21 feet; (3) a 77-foot-long by 22-foot to 49-foot-wide forebay intake structure, and (4) a 20-foot-long by 16-foot-wide sluiceway section containing a gate well located at the west end of the spillway section; (5) a 260-foot-long by 25.5-foot-deep concrete power canal leading to (6) a stone rack house containing trash racks and rakes; (7) two 6-foot-in-diameter steel riveted penstocks extending 401 feet and 411 feet, respectively, from the rack house to (8) a 67-foot-long by 40-foot-wide reinforced concrete powerhouse, housing two 1,320-kW generating units for a total installed capacity of 2,640-kW; (9) a 200-foot-long, 2.3-kV transmission line; and (10) appurtenant facilities. The project has an annual average generation of 13,991,000 kWh. The purpose of the project is to produce electric power generation for distribution on the licensee's transmission and distribution facilities.

m. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20246, or by calling (202) 208–1371. The application may be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Dockets'' and follow the instructions (call 202–208–2222 for assistance).

n. *Scoping Process.* The Commission intends to prepare an Environmental Assessment (EA) on the project in accordance with the National Environmental Policy Act. The EA will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed action.

Scoping Meetings

The Commission will hold two scoping meetings, one in the evening and one during the day, to help us identify the scope of issues to be addressed in the EA.

The evening scoping meeting is primarily for public input and the daytime scoping meeting will focus on resource agency concerns. All interested individuals, organizations, and agencies are invited to attend one or both of the meetings, and to assist the staff in identifying the scope of the environmental issues that should be analyzed in the EA. The times and locations of these meetings are as follows:

Evening Scoping Meeting

Date: November 1, 2001
Time: 7 to 9 p.m.
Place: Best Western, Plattsburgh, NY

Daytime Scoping Meeting

Date: November 2, 2001
Time: 10 a.m. to 12 p.m.
Place: Best Western, Western, Plattsburgh, NY

Individuals needing directions to the scoping meetings should contact Ms. Carol Howland, NYSEG, at 607–762–8881.

To help focus discussions, we will distribute a Scoping Document (SD1) outlining the subject areas to be addressed in the EA to the parties on the Commission's mailing list. Copies of the SD1 also will be available at the scoping meeting.

Site Visit

The licensee and FERC staff will conduct a project site visit beginning at 1 p.m. on November 2, 2001. All interested individuals, organizations, and agencies are invited to attend. All participants should meet at the Rainbow Falls Hydropower Project parking lot on Mace Chasm Road, also known as Old State Road, in Ausable Chasm, NY. All participants are responsible for their own transportation to the site. Anyone with questions about the site visit should contact Ms. Carol Howland, NYSEG, at 607–762–8881.

Objectives

At the scoping meetings, staff will: (1) Summarize the environmental issues tentatively identified for analysis in the EA; (2) solicit from the meeting participants all available information, especially quantitative data, on the resources at issue; (3) encourage statements from experts and the public on issues that should be analyzed in the EA, including view points in opposition to, or in support of, the staff's preliminary views; (4) determine the resource issues to be addressed in the EA; and (5) identify those issues that require a detailed analysis, as well as those issues that do not require a detailed analysis.

Procedures

The meetings will be recorded by a stenographer and will become part of the formal record of the Commission proceeding on the project. Individuals presenting statements at the meetings will be asked to sign in before the meeting starts and to clearly identify themselves for the record.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meetings and to assist staff in defining and clarifying the issues to be addressed in the EA.

David P. Boergers,

Secretary.

[FR Doc. 01–20064 Filed 8–9–01; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7028–4]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Reporting and Recordkeeping Requirements for Importation of Nonconforming Marine Engines, OMB Control Number 2060–0320, expires September 30, 2001. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 10, 2001.

ADDRESSES: Send comments, referencing EPA ICR Number 1723.03 and OMB Control Number 2060–0320, to the following addresses: Susan Auby, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822), 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001; and

to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Susan Auby at EPA by phone at (202) 260–4901, by E-mail at *Auby.susan@epamail.epa.gov,* or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 1723.03. For technical questions about the ICR contact Leonard Lazarus at EPA by phone at (202) 564–9281.

SUPPLEMENTARY INFORMATION:

Title: Reporting and Recordkeeping Requirements for Importation of Nonconforming Marine Engines, OMB Control Number 2060–0320, EPA ICR No. 1723.03, expiring September 30, 2001. This is a request for extension of a currently approved collection.

Abstract: Individuals and businesses importing marine engines, including outboard engines and personal water craft, request approval for engine importations. The collection of this information is mandatory (40 CFR 89.601 *et seq.* & 91.701 *et seq.* and Clean Air Act Sections 203 and 208) in order to ensure compliance of nonconforming engines with Federal emissions requirements. Joint EPA and Customs regulations at 40 CFR 89.601 *et seq.*, 40 CFR 91.701 *et seq.*, and 19 CFR 12.74 promulgated under the authority of Clean Air Act Sections 203 and 208 give authority for the collection of information. This authority was extended to nonroad engines under section 213(d). The information is used by program personnel to ensure that all Federal emission requirements concerning imported nonconforming engines are met. Any information submitted to the Agency for which a claim of confidentiality is made, is safeguarded according to policies set forth in Title 40, Chapter I, Part 2, Subpart B—Confidentiality of Business Information (see 40 CFR 2), and the public is not permitted access to information containing personal or organizational identifiers. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on May 8, 2001; no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 0.5 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected entities: Individuals and businesses importing marine engines.

Estimated Number of Respondents: 1,000.

Frequency of Response: 3.1 responses per year.

Estimated Total Annual Hour Burden: 1550.

Estimated Total Capital, O&M Cost Burden: $77,500.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR Number 1723.03 and OMB Control Number 2060–0320 in any correspondence.

Dated: July 31, 2001.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 01–20129 Filed 8–9–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6620–7]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information, (202) 564–7167 or www.epa.gov/oeca/ofa.

Weekly Receipt of Environmental Impact Statements

Filed July 30, 2001 Through August 03, 2001

Pursuant to 40 CFR 1506.9.

EIS No. 010288, DRAFT EIS, FHW, MS, East Harrison County Connector Construction, I–10 to US 90, Funding, US Army COE and US Coast Guard Permits Issuance and Possible Transfer of Federal Lands, Harrison County, MS, Comment Period Ends: September 24, 2001, Contact: Cecil W. Vick, Jr (601) 965–4217.

EIS No. 010289, DRAFT EIS, COE, PA, Dents Run Watershed Ecosystem Restoration, Construction and Operation of Six Acid Mine Drainage Abatement Projects, Implementation, Benezette Township, Susquehana River Basin, Elk County, PA, Comment Period Ends: September 24, 2001, Contact: Greg Nielson (410) 962–8111. This document is available on the Internet at: www.nab.usace.army.mil/projects/civil.htm.

EIS No. 010290, DRAFT EIS, FHW, MO, Interstate 70 Corridor Improvements, Kansas City to St. Louis, Funding, US Army COE Section 404 and 10 and US Coast Guard Section 9 Permits Issuance, several counties, MO, Comment Period Ends: September 25, 2001, Contact: Don Neumann (573) 638–2620.

EIS No. 010291, DRAFT EIS, UAF, MT, Montana Air National Guard Air-to-Ground Training Range Development for Use by the 120th Fighter Wing (120th FW), Implementation, Phillips and Blaine Counties, MT, Comment Period Ends: September 24, 2001, Contact: Maj. Tammy Mitnik (301) 836–8636.

EIS No. 010292, DRAFT EIS, AFS, AK, Helicopter Landing Tours on the Juneau Icefield 2002 to 2006, Combination Fixed-Wing and Helicopter Landing Tour Operations to Antler Glacier Lake, Special Use Permits Issuance, Tongass National Forest, City and Borough of Juneau, AK, Comment Period Ends: September 24, 2001, Contact: Laurie Thorpe (907) 790–7439. This document is available on the Internet at: www.fs.fed.us/r10/tongass/index.html.

EIS No. 010293, FINAL EIS, FHW, IN, IN–145 New Road Construction, Funding, IN–37 and the existing I–64 Interchange near St. Croix in Perry County to the east junction of IN–64 and IN–145 in Crawford County, IN, Wait Period Ends: September 10, 2001, Contact: Robert Dirks (317) 915–7492.

EIS No. 010294, DRAFT EIS, FRC, NY, Eastchester Project, Natural Gas Pipeline and Associated Facilities, (Docket Nos. CP00–232–001) Construction, Operation and Maintenance, from Northport Long Island to the Bronx, Approval and US Army COE Section 10 and 404

Permits Issuance, Bronx Borough, NY, Comment Period Ends: September 24, 2001, Contact: John Schnagl (202) 219–2661. This document is available on the Internet at: www.ferc.gov.

EIS No. 010295, DRAFT EIS, AFS, OR, WA, Plentybob Ecosystem Restoration Project, Restoration Activities include: Prescribed Fire, Timber Harvest, Road Obliteration, Hardwood Planting and Noxious Weed Treatment, Implementation, Walla Walla Ranger District, Umatilla National Forest, Umatilla County, OR, Comment Period Ends: September 24, 2001, Contact: Dennis Sedam (509) 522–6050.

EIS No. 010296, FINAL EIS, USA, MD, Fort George G. Meade Future Development and Operations of a New Administrative and Support Buildings, Anne Arundel and Howard Counties, MD, Wait Period Ends: September 10, 2001, Contact: Jim Gebhardt (301) 677–9365.

EIS No. 010297, FINAL EIS, AFS, MT, Lolo National Forest, Big Game Winter Range and Burned Area Management, Restoration, Prevention and Cooperation, Implementation, Missoula, Lake, Mineral, Sanders, Granite, Powell, Lewis and Clark, Flathead and Ravalli Counties, MT, Comment Period Ends: September 10, 2001, Contact: Andy Kulla (406) 329–3962.

EIS No. 010298, FINAL EIS, TVA, TN, AL, Guntersville Reservoir Land Management Plan, Implementation, Proposal to Update a 1983 Land Allocation Plan, Jackson and Marshall Counties, AL and Marion County, TN, Wait Period Ends: September 10, 2001, Contact: Nancy R. Greer (256) 571–4289.

Dated: August 7, 2001.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 01–20123 Filed 8–9–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6620–8]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the **Federal Register** dated April 14, 2000 (65 FR 20157).

Draft EISs

ERP No. D–AFS–J65339–UT Rating EC2, Solitude Mountain Resort Master Development Plan Update (MDP), Implementation, Special-Use-Permit, Wasatch-Cache National Forest, Salt Lake County, UT.

Summary: EPA expressed environmental concerns regarding the impacts to, or analysis of, water quality and quantity, aquatic and wetland habitat, wildlife habitat, alpine tundra and development of additional support facilities.

ERP No. D–FAA–K51040–CA Rating EC2, Santa Barbara Airport Improvements, Extension of Runway Safety Areas for Runway 7/25, Expansion of the Airline Terminal Building, New Air Cargo Building, New Taxiway M, Pavement of Taxiway B, Additional T-Hangers and a New On-Airport Service Road, Funding, COE Section 404 and 10 Permits, Santa Barbara County, CA.

Summary: EPA expressed environmental concerns due to a loss of eight acres of coastal wetlands, the adequacy of mitigation to compensate for unavoidable wetlands, the adequacy of mitigation to compensate for unavoidable wetlands loss, increased water pollution loading and an apparent discrepancy regarding air quality conformity.

The FEIS/R should have mitigation adequate to ensure consistency with the Clean Water Act and Federal regulations governing the issuance of permits under Clean Water Act Section 404 and clarify/resolve the air quality issue.

ERP No. DD–NOA–L64015–AK Rating EC2, Groundfish Fishery Management Plan, Implementation, Bering Sea and Aleutian Islands, AK.

Summary: EPA expressed environmental concerns regarding the analyses for different species and groups of species, and the incomplete discussion of the ecology of the fishery. EPA recommends that the final EIS use similar methodologies in its impacts analysis, and bolster the discussion of the ecology of the fishery.

ERP No. DS–UMC–K11067–00 Rating LO, Yuma Training Range Complex Management, Additional Information on the Cumulative Impacts of Activities on the Sonoran pronghorn (Antilocapra americana sonorienisis), Marine Corps Air Station Yuma, Goldwater Range, Yuma and La Paz Cos., AZ and Chocolate Mountain Range, Imperial and Riverside, CA.

Summary: EPA commended the lead agency for its thorough analysis of cumulative effects on the Sonoran pronghorn.

FINAL EISs

ERP No. F–AFS–F65028–MI, Plantation Lakes Vegetation Management Project, Implementation, Ottawa National Forest, Kenton and Ontonagon Ranger Districts, Houghton County, MI.

Summary: EPA has not identified any potential environmental impacts requiring changes to the proposed action.

ERP No. F–BLM–J65331–00, Williams, Questar, Kern River Pipeline Project, To Approve a Petroleum Products Pipeline, and one or two Natural Gas Pipelines and To Amend Forest Plan, UT, NM and CO.

Summary: EPA continues to have concerns that the Equilon pipeline from Odessa, TX to Bloomfield, NM was not disclosed as a connected action. Therefore, the final EIS could not evaluate the entire scope of possible impacts. BLM has stated they will compile additional information for EPA to consider.

ERP No. F–DOE–K08023–AZ, Sundance Energy Project, Interconnecting a 600-megawatt Natural Gas-Fired, Simple Cycle Peaking Power Plant with Western's Electric Transmission System, Construction and Operation on Private Lands, Pinal County, AZ.

Summary: EPA continued to express concerns regarding the storage and reuse of wastewater, bioaccumulation of contaminants in wastewater storage ponds, and CWA Section 404 compliance. EPA suggested that the Record of Decision provide data and documentation to address these concerns, and EPA urged the action agency and proponent to work with the local community on safety concerns with the storage and use of liquid ammonia.

ERP No. F–FAA–A52169–00, Programmatic EIS—Commercial Launch Vehicles, Implementation, Issuing a Launch License.

Summary: EPA has no objection to the action as proposed.

ERP No. F–NPS–B65022–MA, New Bedford Whaling National Historical Park, General Management Plan, Implementation, Bristol County, MA.

Summary: EPA had no objections to the proposed project.

ERP No. FA–FAA–F51040–IN, Indianapolis International Airport Master Plan Development, Updated

Information to Construct a Midfield Terminal, Midfield Interchange, and Associated Developments, Airport Layout Plan Approval, Funding and Section 404 Permit, Marion County, IN.

Summary: EPA continues to have concerns related to the possibility of a shortfall in the provision of forested compensatory wetlands as related both to this project and the previous major construction project at the airport.

Dated: August 7, 2001.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 01–20124 Filed 8–9–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7029–7]

Technical Workshop on the Draft Framework for Cumulative Risk Assessment

AGENCY: Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: The Environmental Protection Agency (EPA) is announcing a meeting, organized and convened by Versar, Inc., a contractor to EPA's Risk Assessment Forum, for external scientific peer consultation on the draft Framework for Cumulative Risk Assessment. The meeting is being held to discuss technical issues associated with cumulative risk assessment and how to capture these issues in a broad, flexible framework that will inform future guidance development efforts in this area. Meeting participants, invited by Versar, Inc., will be drawn from academia, industry, consulting, environmental and community groups and will provide expertise in areas such as aggregate and cumulative exposure, chemical mixtures, socioeconomic vulnerability, as well as public health assessment and uncertainty analysis.

DATES: The meeting will be held from 8:30 a.m. to 5 p.m. on Wednesday, August 22, 2001, and from 8:30 a.m. to 5 p.m. on Thursday, August 23, 2001. Members of the public may attend as observers, and there will be a limited time for comments from the public. Comments should be in writing and must be postmarked by September 10, 2001.

ADDRESSES: The meeting will be held at the Marriott Crystal Gateway Hotel, Arlington, VA. Versar, Inc., an EPA contractor, will convene and facilitate the workshop. To register to attend the workshop as an observer, visit *www.versar.com/epa/cumriskmtg.htm*, or contact Ann Cyrus, Versar, Inc.; telephone: (703) 750–3000 extension 274; facsimile: 703–642–6954; email *cyrusann@versar.com* by 5 p.m. eastern daylight time, August 17, 2001. Space is limited, and reservations will be accepted on a first-come, first-served basis. There will be a limited time for comments from the public during the workshop. Please let Versar know if you wish to make comments, and provide Versar with one written copy of comments prior to the start of the meeting.

The draft Framework for Cumulative Risk Assessment is available primarily via the Internet at *http://www.epa.gov/ncea/raf/rafpub.htm*. A limited number of paper copies are available from the Technical Information Staff (8623D), NCEA–W; telephone: 202–564–3261; facsimile: 202–565–0050. If you are requesting a paper copy, please provide your name, mailing address, and the document title, draft Framework for Cumulative Risk Assessment. Copies are not available from Versar. Comments may be mailed to the Technical Information Staff (8623D), NCEA–W, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, or delivered to the Technical Information Staff at 808 17th Street, NW., 5th Floor, Washington, DC 20006; telephone: 202–564–3261; facsimile: 202–565–0050. Comments should be in writing and please submit one unbound original with pages numbered consecutively, and two copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies. Electronic comments may be emailed to: *nceadc.comment@epa.gov.*

Please note that all technical comments received in response to this notice will be public information. For that reason, commentors should not submit personal information (such as medical data or home address), Confidential Business Information, or information protected by copyright. Due to limited resources, acknowledgments will not be sent.

FOR FURTHER INFORMATION CONTACT: For further information concerning the technical workshop please contact Ann Cyrus, Versar, Inc.; telephone: (703) 750–3000 extension 274; facsimile: 703–642–6954; email *cyrusann@versar.com*. For technical inquiries concerning the draft Framework for Cumulative Risk Assessment, please contact Steven Knott, U.S. EPA Office of Research and Development, Risk Assessment Forum (8601-D), 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone (202) 564–3359; facsimile (202) 565–0062; email *knott.steven@epa.gov*.

SUPPLEMENTARY INFORMATION: Several reports have highlighted the importance of understanding the accumulation of risks from multiple environmental stressors. These include the National Research Council's (NRC) 1994 report Science and Judgment in Risk Assessment and the 1997 report by the Presidential/Congressional Commission on Risk Assessment and Risk Management entitled Risk Assessment and Risk Management in Regulatory Decision-Making. In addition, legislation such as the Food Quality Protection Act of 1996 (FQPA), has directed the Environmental Protection Agency (EPA) to move beyond single chemical assessments and to focus, in part, on the cumulative effects of chemical exposures occurring simultaneously. Further emphasizing the need for EPA to focus on cumulative risks are cases filed under Title VI of the 1964 Civil Rights Act. These cases have necessitated a population-based approach to assessing human health risks from environmental contaminants.

In response to the increasing focus on cumulative risk, several EPA programs have begun to explore cumulative approaches to risk assessment. In 1997, The EPA Science Policy Council issued a guidance on planning and scoping for cumulative risk assessments *(http://www.epa.gov/ord/spc/2cumrisk.htm).* More recently, the Office of Pesticide Programs has developed draft cumulative risk assessment guidance focused on implementing certain provisions of FQPA. The Office of Air Quality Planning and Standards has applied cumulative exposure models in its analyses for the National-Scale Air Toxics Assessment (NATA). In addition, community-specific cumulative risk assessment has been explored through the Agency's Cumulative Exposure Project.

The EPA Science Policy Council has asked the Risk Assessment Forum (RAF) to begin developing Agency-wide cumulative risk assessment guidance that builds from these activities. As a first step, a technical panel convened under the RAF has been working to develop a Framework for Cumulative Risk Assessment. Building from the Agency's growing experiences, this Framework is intended to identify the basic elements of the cumulative risk assessment process. It should provide a flexible structure for the technical issues

and define key terms associated with cumulative risk assessment.

The workshop announced in this notice has two primary purposes. First, it will provide interested stakeholders with an opportunity to see an early draft of the Framework document. Second, it affords an early opportunity to hear input from these stakeholders which will assist with further development of the draft Framework. Versar will focus the workshop discussion on the technical issues associated with the current draft of the Framework for Cumulative Risk Assessment.

Dated: August 3, 2001.

Art Payne,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 01–20128 Filed 8–9–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00733; FRL–6797–4]

FIFRA Scientific Advisory Panel; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: There will be a 3–day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and Food Quality Protection Act (FQPA) Scientific Advisory Panel (SAP) review sets of issues being considered by the Agency pertaining to: Preliminary Cumulative Hazard and Dose-Response Assessment for Organophosphorus Pesticides: Determination of Relative Potency and Points of Departure for Cholinesterase Inhibition, and Common Mechanism of Action for Thiocarbamates and Dithiocarbamates. The meeting is open to the public. Seating at the meeting will be on a first-come basis. Individuals requiring special accommodations at this meeting, including wheelchair access, should contact Paul Lewis at the address listed under **FOR FURTHER INFORMATION CONTACT** at least 5 business days prior to the meeting, so appropriate arrangements can be made.

DATES: The meeting will be held from September 5 through September 7, 2001, from 8:30 am to 5 p.m., as follows:

September 5 and 6, 2001—Session I–Preliminary Cumulative Hazard and Dose-Response Assessment for Organophosphorus Pesticides: Determination of Relative Potency and Points of Departure for Cholinesterase Inhibition.

September 7, 2001—Session II–Common Mechanism of Action for Thiocarbamates and Dithiocarbamates.

ADDRESSES: The meeting will be held at the Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, VA 22202. The telephone number for the Sheraton Crystal City Hotel is (703) 486–1111.

Requests to participate may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your request must identify docket control number OPP–00733 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Paul Lewis or Larry Dorsey, Designated Federal Officials, Office of Science Coordination and Policy (7202), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5369; fax number: (703) 605–0656; e-mail address: *lewis.paul@epa.gov* or *dorsey.larry@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), FIFRA and FQPA. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* A meeting agenda is now available; EPA's primary background documents should be available by late August. In addition, the Agency may provide additional background documents as the material becomes available. You may obtain electronic copies of these documents, and certain other related documents that might be available electronically, from the FIFRA SAP Internet Home Page at *http://www.epa.gov/scipoly/sap.* To access this document on the Home Page select **Federal Register** notice announcing this meeting. You can also go directly to the **Federal Register** listings at *http://www.epa.gov/fedrgstr/.*

2. *In person.* The Agency has established an administrative record for this meeting under docket control number OPP–00733. The administrative record consists of the documents specifically referenced in this notice, any public comments received during an applicable comment period, and other material information, including any information claimed as Confidential Business Information (CBI). This administrative record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. In addition, the Agency may provide additional background documents as the material becomes available. The public version of the administrative record, which includes printed, paper versions of any electronic comments that may be submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 am to 4 pm, Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How Can I Request to Participate in this Meeting?

You may submit a request to participate in this meeting through the mail, in person, or electronically. Do not submit any information in your request that is considered CBI. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00733 in the subject line on the first page of your request. Interested persons are permitted to file written statements before the meeting. To the extent that time permits, and upon advance written request to the person listed under **FOR FURTHER INFORMATION CONTACT**, interested persons may be permitted by the Chair of the FIFRA Scientific Advisory Panel to present oral statements at the meeting. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment (e.g., overhead projector, 35 mm projector, chalkboard, etc.). There is no limit on the extent of written comments for consideration by the Panel, but oral statements before the Panel are limited to approximately 5 minutes. The Agency also urges the public to submit written comments in lieu of oral presentations. Persons wishing to make oral and/or written statements at the meeting should contact the person listed under **FOR**

FURTHER INFORMATION CONTACT and submit 30 copies of their presentation and/or remarks to the Panel. The Agency encourages that written statements be submitted before the meeting to provide Panel Members the time necessary to consider and review the comments.

1. *By mail.* You may submit a request to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your request electronically by e-mail to: opp-docket@epa.gov. Do not submit any information electronically that you consider to be CBI. Use WordPerfect 6.1/8.0 or ASCII file format and avoid the use of special characters and any form of encryption. Be sure to identify by docket control number OPP–00733. You may also file a request online at many Federal Depository Libraries.

II. Background

A. Purpose of the Meeting

Session I—Preliminary Cumulative Hazard and Dose-Response Assessment for Organophosphorus Pesticides—Determination of Relative Potency and Points of Departure for Cholinesterase Inhibition

The Food Quality Protection Act (FQPA) of 1996 requires EPA to consider the cumulative effect to human health that can result from exposure to pesticides that have a common mechanism of toxicity. Over the last 2 years, the Office of Pesticide Programs (OPP) has presented to the FIFRA Scientific Advisory Panel (SAP) for comment proposed guidance, tools and methodologies for conducting cumulative risk assessments. In September 2000, a case study on 24 organophosphorus pesticides was presented to the SAP to demonstrate methods for determining the cumulative risk.

In order to accomplish the reassessment of 66% of pesticide tolerances by August 3, 2002, as required by the FQPA, the Agency needs to complete the tolerance reassessment for the organophosphorus pesticides by performing a cumulative risk assessment for this group. Therefore, the Agency intends to complete the Preliminary Cumulative Risk Assessment for the Organophosphorus Pesticides by December 2001. Toward this end, the Agency has considered the SAP written comments on the approach that was outlined in the September 27, 2000 SAP Report entitled ''Endpoint Selection and Determination of Relative Potency in Cumulative Hazard and Dose-response Assessment: A Pilot Study of Organophosphorus Pesticide Chemicals'' (This and related reports can be obtained at the SAP web site at *http://www.epa.gov/scipoly/sap.*). The current document has revised the relative potency factor analysis by incorporating the recommendations of the SAP.

The purpose of the current review is to seek comment from the SAP on whether the revised hazard and dose-response method on the organophosphorus pesticides has adequately addressed the September 2000 SAP comments.

Session II—Common Mechanism of Action for Thiocarbamates and Dithiocarbamates

At a public meeting held in September 1999, the SAP recommended that the Agency address effects of concern reported in studies conducted on thiocarbamates and dithiocarbamate pesticides. The Agency has since prepared two documents that describe: (1) The Agency's cumulative risk assessment of a common assessment group of thiocarbamates; and (2) The results of the Agency's evaluation of common effects induced by the dithiocarbamates by a common method of toxicity. The approach to assessment of thiocarbamates was to identify a common effect that might be attributable to a common mechanism and to conduct a screening level cumulative dietary (food) assessment to determine if grouping them based on the common effect and concurrent exposures to the group would reveal the potential for cumulative dietary risks. This assessment was conducted using the assumption that neuropathological effects induced by the thiocarbamates may be attributed to a common mechanism of toxicity. The screening approach also assumed 100% of crop treated with each thiocarbamate registered for use on crops and used tolerance levels for the exposure component of the assessment rather than a more refined estimate of actual residues.

The Agency's analysis of the dithiocarbamates indicated that they share a common metabolite that is associated with the induction of a common toxicity and that exposure to this group of chemicals will require an aggregation of the residue of that metabolite that may be formed following treatment of crops with these pesticides.

The purpose of this session is to seek the SAP's recommendations on the Agency work since the September 1999 SAP meeting.

B. Panel Report

The Agency anticipates that the Panel's report of their recommendations will be available approximately 60 days after the meeting. The Panel's report will be posted on the FIFRA SAP web site or may be obtained by contacting the Public Information and Records Integrity Branch at the address or telephone number listed in Unit I. of this document.

List of Subjects

Environmental protection.

Dated: August 2, 2001.

Andy Privee, Jr.,

Acting Director, Office of Science Coordination and Policy.

[FR Doc. 01–20134 Filed 8–9–01; 8:45 a.m.]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL 7031–3]

Science Advisory Board; Notification of Public Advisory Committee Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Science Advisory Board's (SAB) Executive Committee will conduct a public teleconference meeting on August 27, 2001 between the hours of 1 pm to 3 pm Eastern Time. The meeting will be coordinated through a conference call connection in Room 6013 in the USEPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. The public is encouraged to attend the meeting in the conference room noted above. However, the public may also attend through a telephonic link, to the extent that lines are available. Additional instructions about how to participate in the conference call can be obtained by calling Ms. Diana Pozun (see contact information below).

Purpose of the Meeting: In this meeting, the Executive Committee plans

to review reports from some of its Committees/Subcommittees, most likely including the following:

(a) Executive Committee Arsenic Rule Benefits Review Panel (ARBRP) report on ''Arsenic Rule Benefits Analysis: Science Advisory Board Review'' (see 65 FR 34926, dated July 2, 2001 for details)

(b) Executive Committee Science and Technology Achievement Awards (STAA) Subcommittee ''Recommendations on the FY2000 Scientific and Technological Achievement (STAA)'' (see 66 FR 70906, dated November 28, 2000 for details).

(c) Research Strategies Advisory Committee ''Implementation of the Environmental Protection Agency's Peer Review Program: An SAB Review'' (see 66 FR 19933, dated April 18, 2001 for details).

Availability of Review Materials: Drafts of the reports that will be reviewed at the meeting will be available to the public on the SAB website (*http://www.epa.gov/sab*) approximately two weeks prior to the meeting.

Charge to the Executive Committee: The focus of the review of these three reports will be on the following questions:

(a) Has the SAB adequately responded to the questions posed in the Charge?

(b) Are the statements and/or responses in the draft report clear?

(c) Are there any errors of fact in the report?

In accord with the Federal Advisory Committee Act (FACA), the public and the Agency are invited to submit written comments on these three questions that are the focus of the review. Submissions should be received by August 20,2001 by Ms. Diana Pozun, EPA Science Advisory Board, Mail Code 1400A, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington DC 20460. (Telephone (202) 564–4544, FAX (202) 501–0582; or via e-mail at *pozun.diana@epa.gov*). Submission by e-mail to Ms. Pozun will maximize the time available for review by the Executive Committee.

Although not required by FACA, the SAB will have a brief period available for applicable public comment. Therefore, anyone wishing to make oral comments on the three focus questions above, but that are not duplicative of the written comments, should contact the Designated Federal Officer for the Executive Committee, Dr. Donald G. Barnes (Tel: 202–564–4533; Fax: 202–501–0323; USEPA Science Advisory Board, Mail Code 1400A, USEPA, 1200 Pennsylvania Ave. NW., Washington, DC 20460; barnes.don@epa.gov) by August 20, 2001.

For Further Information: Any member of the public wishing further information concerning this meeting should contact Dr. Donald Barnes, Designated Federal Officer, Science Advisory Board (1400A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone (202) 564–4533; FAX (202) 501–0323; or via e-mail at *barnes.don@epa.gov.*

Providing Oral or Written Comments at SAB Meetings

It is the policy of the Science Advisory Board to accept written public comments of any length, and to accommodate oral public comments whenever possible (unless otherwise stated). The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. *Oral Comments:* In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes. For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Deadlines for getting on the public speaker list for a meeting are given above. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting. *Written Comments:* Although the SAB accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the committee for their consideration. Comments should be supplied to the appropriate DFO at the address/contact information noted above in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: WordPerfect, Word, or Rich Text files (in IBM–PC/Windows 95/98 format). Those providing written comments and who attend the meeting are also asked to bring 25 copies of their comments for public distribution.

General Information: Additional information concerning the Science Advisory Board, its structure, function, and composition, may be found on the SAB Website (*http://www.epa.gov/sab*) and in *The FY2000 Annual Report of the Staff Director* which is available from the SAB Publications Staff at (202) 564–4533 or via fax at (202) 501–0256. Committee rosters, draft Agendas and meeting calendars are also located on our website.

Meeting Access: Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact Dr. Barnes at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: August 7, 2001.

John R. Fowle III, PhD,

Deputy Staff Director, Science Advisory Board.

[FR Doc. 01–20143 Filed 8–9–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30120; FRL–6791–4]

Pesticide Product Registrations; Conditional Approval

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of applications submitted by Mycogen Seeds, c/o Dow Agrosciences LLC and Pioneer Hi-Bred International, Inc., to conditionally register the pesticide products Herculex I Insect Protection and Pioneer Brand Seed Corn with Herculex I containing a new active ingredientnot included in any previously registered products pursuant to the provisions of section 3(c)(7)(C) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Mike Mendelsohn, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8715; e-mail address: mendelsohn.mike@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/.

To access a fact sheet which provides more detail on this registration, go to the Home Page for the Office of Pesticide Programs at http://www.epa.gov/pesticides/, and select ''fact sheet.''

2. *In person*. The Agency has established an official record for this action under docket control number OPP–30120. 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 anyinformation claimed as Confidential Business Information (CBI). This official record includesthe 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.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label, the list of data references, the data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 119, Crystal Mall #2, Arlington, VA (703) 305–5805. Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A–101), 1200 Pennsylvania Ave., NW., Washington, DC 20460. Such requests should: Identify the product name and registration number and specify the data or information desired.

A paper copy of the fact sheet, which provides more detail on this registration, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

II. Did EPA Conditionally Approve the Application?

A conditional registration may be granted under section 3(c)(7)(C) of FIFRA for a new active ingredient where certain data are lacking, on condition that such data are received by the end of the conditional registration period and do not meet or exceed the risk criteria set forth in 40 CFR 154.7; that use of the pesticide during the conditional registration period will not causeunreasonable adverse effects; and that use of the pesticide is in the public interest. The Agency has considered the available data on the risks associated with the proposed use of *Bacillus thuringiensis* Cry1F protein and the genetic material necessary for its production (plasmid insert PHI8999) in corn plants, and information on social, economic, and environmental benefits to be derived from such use. Specifically, the Agency has considered the nature and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use *Bacillus thuringiensis* Cry1F protein and the genetic material necessary for its production (plasmid insert PHI8999) in corn plants during the period of conditional registration will not cause any unreasonable adverse effect on the environment, and that use of the pesticide is, in the public interest.

Consistent with section 3(c)(7)(C) of FIFRA, the Agency has determined that these conditional registrations are in the public interest. Use of the pesticides are of significance to the user community, and appropriate labeling, use directions, and other measures have been taken to ensure that use of the pesticides will not result in unreasonable adverse effects to man and the environment.

III. Conditionally Approved Registrations

1. EPA Registration No.: 68467–2. Registrant: Mycogen Seeds, c/o Dow Agrosciences LLC, 9330 Zionsville Road, Indianapolis, IN 46268. Product name: Herculex I Insect Protection. Active ingredient: *Bacillus thuringiensis* Cry1F protein and the genetic material necessary for its production (plasmid insert PHI8999) in corn plants. Proposed classification/Use: None. For full commercial use.

2. File Symbol: 29964–G. Applicant: Pioneer Hi-Bred International, Inc., 7250 NW 62nd Avenue, P.O. Box 552, Johnston, Iowa 50131–0552.Product name: Pioneer Brand Seed Corn with Herculex I. Active ingredient: *Bacillus thuringiensis* Cry1F protein and the genetic material necessary for its production (plasmid insert PHI8999) in corn plants. Proposed classification/Use: None. For full commercial use.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: July 26, 2001.

Janet L.Andersen,

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

[FR Doc. 01–20135 Filed 8–9–01; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[PF–1034; FRL–6794–2]

Notice of Filing a Pesticide Petition to Establish a Tolerance fora Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket control number PF–1034, must be received on or before September 10, 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.C. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–1034 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5697; e-mail address: *tompkins.jim@;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 PF–1034. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–1034 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: *opp-docket@epa.gov,* or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–1034. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

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 the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 25, 2001

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the view of the petitioner. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues of an explanation of why no such method is needed.

DuPont Agricultural Products

PP 4F4391

EPA has received a pesticide petition (PP 4F4391) from DuPont Agricultural Products,Wilmington, DE proposing, pursuant to section 408(d) of FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180. This regulation extends the time-limited tolerance for residues of the herbicide pyrithiobac sodium salt (sodium 2-chloro-6-[(4,6-dimethoxypyrimidin-2-yl)thio]benzoate) in or on the raw agricultural commodity cottonseed at 0.02 parts per million (ppm). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

Background and Statutory Findings

In the **Federal Register** of October 22, 1997 (62 FR 54778) (FRL–5746–6), and the **Federal Register** of October 20, 1999 (64 FR 56464) (FRL–6386–5), EPA twice extended the time-limited tolerance pursuant to FFDCA for residues of the herbicide pyrithiobac sodium salt (sodium 2-chloro-6-[(4,6-dimethoxypyrimidin-2-yl)thio]benzoate) in or on the raw agricultural commodity cottonseed at 0.02 ppm. The tolerance was issued and renewed as a time-limited tolerance because EPA required additional residue data on the commodity of cotton gin byproducts. At this time EPA has not fully evaluated the sufficiency of the submitted data supporting this petition. The petitioner proposes to again renew the time-limited tolerance for an additional 3–year period and continue to retain the pesticide labeling previously accepted under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, which bears a restriction against feeding cotton gin byproducts from treated fields to livestock. DuPont has requested this tolerance extension pursuant to section 408(d) of the FFDCA, as amended, 21 U.S.C. 346a(d), by the Food Quality Protection Act of 1996 (Public Law 104–170, 110 Stat. 1489). The request addresses the requirements of the new FFDCA section 408(d)(2). The time-limited tolerance would expire on September 30, 2001. An adequately validated analytical method is available for enforcement purposes. Pursuant to section 408(d)(2)(A)(i) of the FFDCA, as amended, DuPont has submitted the following summary of information, data and arguments in support of its pesticide petition. This summary was proposed by DuPont and EPA has not yet fully evaluated the additional data supporting this petition. EPA edited the document to clarify the conclusions and arguments presented by DuPont and to remove certain extraneous material.

A. Residue Chemistry

1. *Plant metabolism*. The qualitative nature of the residues of pyrithiobac sodium in cotton is adequately understood for the purposes of this tolerance. Metabolism studies with pyrithiobac sodium indicate the major metabolic pathway being o-dealkylation of the parent compound resulting in o-desmethyl pyrithiobac sodium (O-DPS). O-DPS, both free and conjugated, was the major metabolite identified in cotton foliage. The results of a confined crop rotation study with pyrithiobac sodium revealed the presence of a metabolite 2-chloro-6-sulfobenzoic acid (CSBA) not seen in the cotton metabolism study. This metabolite appeared to originate from soil metabolism of pyrithiobac sodium. Since preemergence applications of pyrithiobac sodium are allowed, crop residues of CSBA were considered a possibility. In consideration of PP 4F4391 CBTS, in consultation with the HED Metabolism Committee has previously concluded that for the proposed use on cotton, none of the pyrithiobac sodium metabolites including O-DPS and CSBA warrant inclusion in the tolerance regulation, and that the only residue of concern is the parent, pyrithiobac sodium.

2. *Analytical method*. There is a adequately validated practical analytical method available using HPLC-UV with column switching, to measure levels of pyrithiobac sodium in or on cotton with a limit of quantitation that allows monitoring of cottonseed at or above tolerance levels. EPA has provided information on this method to FDA for future publication in PAM II.

3. *Magnitude of residues*. Crop field trial residue data from a 60–day PHI study shows that the established pyrithiobac sodium time-limited tolerance on cottonseed of 0.02 ppm will not be exceeded when Staple* is used as directed. An adequate cottonseed processing study shows that pyrithiobac sodium does not concentrate in cottonseed processed commodities; thus no tolerances on these commodities are required.

B. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as

the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by pyrithiobac sodium are discussed in this unit.

1. *Acute toxicity*. Pyrithiobac sodium technical has been placed in EPA Toxicity Category II for acute eye irritation based on the test article inducing irritation in the form of corneal opacity, iritis and conjunctival redness, and discharge in the eyes of rabbits after receiving ocular doses of 36 mg (0.1 mL). Signs of irritation were clear within 14 days of treatment. Pyrithiobac sodium has been placed in Toxicity Category III for acute dermal toxicity based on the test article being nonlethal and nonirritating at the limit dose of 2,000 milligrams/kilogram (mg/kg) (highest dose tested). Pyrithiobac sodium has been placed in Toxicity Category III for acute oral toxicity based on acute oral LD_{50s} of 3,200 and 3,300 mg/kg for male and female rats, respectively. Pyrithiobac sodium has been placed in Category IV for the remaining acute toxicity tests based on the following: A rat acute inhalation study with an LC_{50} 6.9 mg/L; and a primary dermal irritation test that did not induce a dermal irritation response. A dermal sensitization test with pyrithiobac sodium technical in guinea pigs demonstrated no significant effects. EPA has concluded that no endpoint exists to suggest any evidence of significant toxicity from acute, short-termor intermediate term exposures from the use of pyrithiobac sodium on cotton.

2. *Genotoxicity*. Pyrithiobac sodium technical was negative (non-mutagenic and non-genotoxic) in the following tests: Ames microbial mutation assay; the hypoxanthine-guanine phosphoribosyl transferase gene mutation assay using Chinese hamster ovary cells; induction of unscheduled DNA synthesis (UDS) in primary rat hepatocytes; and induction of micronuclei in the bone marrow cells of mice. Pyrithiobac sodium was positive in an*in vitro* assay for chromosome aberrations in human lymphocytes. Based on the weight of these data, pyrithiobac sodium is neither genotoxic nor mutagenic.

3. *Reproductive and developmental toxicity.*A two-generation reproduction study with rats treated in the diet with pyrithiobac sodium demonstrated a maternal no observed adverse effect level (NOAEL) of 1,500 ppm (103 mg/kg/day) and a maternal lowest observed adverse effect level (LOAEL) of 7,500 ppm (508 mg/kg/day), based on decreased body weight/gain and food efficacy. The reproductive and offspring NOAEL of 7,500 ppm (508 mg/kg/day) and LOAEL of 20,000 ppm (1,551 mg/kg/day) were also demonstrated based on decreased offspring body weight. Pyrithiobac sodium was not teratogenic when administered to rats or rabbits. A developmental toxicity study with pyrithiobac sodium in rats demonstrated a maternal NOAEL of 200 mg/kg and a maternal LOAEL of 600 mg/kg due to increased incidence of peritoneal staining. A developmental NOAEL of 600 mg/kg and LOAEL of 1,800 mg/kg were demonstrated based on an increased incidence of skeletal variations. A developmental toxicity study with pyrithiobac sodium in rabbits demonstrated maternal and developmental NOAELs of 300 mg/kg and a maternal LOAEL of 1,000 mg/kg based on mortality, decreased body weight gain and feed consumption, increased incidence of clinical signs, and an increase in early resorptions. A developmental LOAEL of 1,000 mg/kg was based on decreased fetal body weight gain.

4. *Subchronic toxicity*. In a 90–day feeding study in rats conducted with pyrithiobac sodium at dietary levels of 0, 10, 50, 500, 7,000 and 20,000 ppm, the NOAEL was 500 ppm (31.8 and 40.5 mg/kg/day, M/F) and the LOAEL was 7,000 ppm (466 and 588 mg/kg/day, M/F) based on decreased body weight gains and increased rate of hepatic B-oxidation in males. In a 90–day feeding study in mice conducted with pyrithiobac sodium at dietary levels of 0, 10, 50, 500, 1,500 and 7,000 ppm, the NOAEL was 500 ppm (83.1 and 112 mg/kg/day, M/F) and the LOEL was 1,500 ppm (263 and 384 mg/kg/day, M/F) based on increased liver weight and increased incidence of hepatocellular hypertrophy in males and decreased neutrophil count in females. In a 90–day feeding study in dogs conducted with pyrithiobac sodium at dietary levels of 0, 50, 5,000, or 20,000 ppm, the NOAEL was 5,000 ppm (165 mg/kg/day) and the LOAEL was 20,000 ppm (626 mg/kg/day) based on decreased red blood cell count, hemoglobin, and hematocrit in females and increased liver weight in both sexes. In a 21–day dermal study with rats conducted with pyrithiobac sodium at exposure levels of 0, 50, 500, or 1,200 mg/kg/day, the dermal irritation NOAEL was 500 mg/kg/day and the dermal irritation LOAEL was 1,200 mg/kg/day. There were no systemic effects observed at this high dose; therefore, the systemic NOAEL is considered to be 1,200 mg/kg/day.

5. *Chronic toxicity*. A 1–year feeding study in dogs conducted with pyrithiobac sodium resulted in a NOAEL of 5,000 ppm (143 and 166 mg/kg/day, M/F) and a LOAEL of 20,000 ppm (580 and 647 mg/kg/day, M/F) based on decreases in body weight gain and increased liver weight. A 78–week dietary oncogenicity study conducted in mice resulted in a systemic NOAEL is 1,500 ppm (217 and 319 mg/kg/day, M/F); the LOAEL is 5,000 ppm (745 and 1,101 mg/kg/day, M/F), based on decreased body weight gain and glomerulonephropathy (murine) in both sexes and treatment related increase in the incidence of foci/focus of hepatocellular alteration in males. There was evidence of carcinogenicity based on significant differences in the pair-wise comparisons of hepatocellular adenomas or adenomas plus carcinomas in the 150 and 1,500 ppm males (but not at the high dose of 5,000 ppm). A 2–year dietary study in rats resulted in systemic NOAELs of 1,500 ppm (58.7 mg/kg/day) for males and 5,000 ppm (278 mg/kg/day) for females. The LOAEL was 5,000 ppm (200 and 918 mg/kg/day, M/F). The LOAEL was based on the following: Increased incidence of eye lesions and mild changes in hematology and urinalysis, and clinical signs indicative of urinary tract dysfunction (both sexes); decreased body weight, body weight gain and food efficiency and an increased incidence of inflammatory and degenerative microscopic lesions in the kidney (females); and increased incidence of focal cystic degeneration in the liver and increased rate of hepatic peroxisome beta-oxidation (males). There was evidence of oncogenicity based on an increasing trend for kidney tubular combined adenoma/carcinoma in male rats and an increasing trend for kidney tubular adenomas in female rats. Although the incidences were low, they were statistically significant. The highest dose level tested in male rats (5,000 ppm) was considered adequate for assessment of oncogenic potential, that in female rats (15,000 ppm) exceeded the Maximum Tolerated Dose (MTD).

6. *Animal metabolism*. Disposition and metabolism of pyrithiobac sodium were tested in male and female rats using two radiolabeled forms of pyrithiobac sodium, both orally and intravenously. Essentially all of the dose was excreted in the urine and feces, with greater than 90% being excreted within 48 hours. The major compound eliminated in urine and feces was O-DPS (desmethyl metabolite), formed by

demethylation of the pyrimidine ring. There was evidence that conjugation with glucuronic acid and 5-hydroxylation of the pyrimidine ring of pyrithiobac sodium were additional minor routes of metabolism in the rat.

7. *Metabolite toxicology*. At this time, there is no evidence that the metabolites of pyrithiobac sodium as identified in either the plant metabolism, confined crop rotation, or animal metabolism studies are of toxicological concern.

8. *Endocrine disruption*. No special studies investigating potential estrogenic or other endocrine effects of pyrithiobac sodium have been conducted. However, the standard battery of required toxicology studies has been completed and found acceptable. These include an evaluation of the potential effects on reproduction and development, and an evaluation of the pathology of the endocrine organs following repeated or long-term exposure to doses that far exceed likely human exposures. Based on these studies there is no evidence to suggest that pyrithiobac sodium has an adverse effect on the endocrine system.

C. Aggregate Exposure

1. *Dietary exposure*— i. *Food*. For purposes of assessing the potential dietary exposure under this tolerance, an estimate of aggregate exposure is made using the time-limited tolerance on cottonseed at 0.02 ppm. The potential exposure is obtained by multiplying the tolerance level residues by the consumption data which estimates the amount of cottonseed products translated as cottonseed meal and cottonseed oil eaten by various population subgroups. Cottonseed is fed to animals, thus exposure of humans to residues of cottonseed might result if such residues are transferred to meat, milk, poultry, or eggs. However, in consideration of PP 4F4391 CBTS has previously concluded that secondary residues in meat, milk, poultry and eggs are not expected from the use of cottonseed (undelinted) as an animal feed. There are no other established tolerances or registered uses for pyrithiobac sodium in the United States. Based on a NOAEL of 58.7 mg/kg/day, from the chronic rat toxicity study and a 100-fold safety factor, the reference dose (RfD) is 0.58 mg/kg/day. Assuming residues at tolerance levels and that 100% of the crop is being treated, a theoretical maximum residue contribution (TMRC) of 0.000001 mg/kg/day is calculated. With the above assumptions (which lead to a conservative assessment of risk), dietary (food) exposure to pyrithiobac sodium will utilize significantly less than 1% of the RfD for the overall U.S. population. For the most highly exposed subgroup (children aged 1 to 6 years), the TMRC is 0.000001 mg/kg/day, which is still less than 1% of the RfD. Pyrithiobac sodium is classified as a group C carcinogen (possible human carcinogen with limited evidence of carcinogenicity in animals). The unit risk, Q1* $(mg/kg/day)^{-1}$, is 1.05 $x10^{-3}$ $(mg/kg/day)^{-1}$ in human equivalents based on kidney tumors in male rats and mice. Based on this upper bound potency factor (Q1*), a 70–year lifespan, and the assumption that 100% of the crop is treated with pyrithiobac sodium, the upper-bound limit of a dietary carcinogenic risk is calculated in the range of 1 incidence in a billion (1.0×10^{-9}).

ii. *Drinking water*. Other potential dietary sources of exposure of the general population to pesticides are residues in drinking water. There is no maximum contaminant level established for residues of pyrithiobac sodium. Based on maximum exposure estimates developed using screening models, the exposure based on drinking water is less than 0.1% of the RfD. In addition, the Environmental Fate and Effects Division (EFED) of EPA has previously concluded after preliminary evaluation of the results of a prospective ground water monitoring study conducted at a highly vulnerable site that pyrithiobac sodium may not be stable enough to leach to ground water at most use sites, even in sandy soils. Based on the results of environmental fate studies and the conditions of use, the potential for drinking water to contribute to the dietary exposure of pyrithiobac sodium is minimal.

2. *Non-dietary exposure*. Pyrithiobac sodium is not currently registered for any use which could result in non-occupational, non-dietary exposure to the general population.

D. Cumulative Effects

Pyrithiobac sodium is based on a new chemical class; there are no known registered herbicides with similar structure. Therefore, EPA should consider only the potential risks of pyrithiobac sodium in its exposure assessment. The herbicidal activity of pyrithiobac sodium is due to the inhibition of acetolactate synthase (ALS), an enzyme only found in plants. ALS is part of the biosynthetic pathway leading to the formation of branched chain amino acids. Animals lack ALS and this biosynthetic pathway. This lack of ALS contributes to the low toxicity of pyrithiobac sodium in animals. There is no evidence to indicate of suggest that pyrithiobac sodium has any toxic effects on mammals that would be cumulative with those of any other chemical.

E. Safety Determination

1. *U.S. population*. EPA has concluded that no endpoint exists to suggest any evidence of significant toxicity from acute, short-term or immediate-term exposure form the use of pyrithiobac sodium on cotton. Based on a complete and reliable toxicity data base, the EPA has adopted an reference dose (RfD) value of 0.58 mg/kg/day using the NOAEL of 58.7 mg/kg/day, from the 2–year chronic toxicity study in rats and a 100-fold safety factor. Using crop tolerance levels and assuming 100% of the crop being treated a Theoretical Maximum Residue Contribution (TMRC) was calculated for the overall U.S. population and 22 population subgroups. This analysis concluded that aggregate exposure to pyrithiobac sodium will utilize significantly less that 1% of the RfD for either the entire U.S. population or any subgroup population. The TMRC for the most highly exposed subgroup identified as children aged 1 thru 6 years was 0.000001 mg/kg/day. EPA generally has no concern for exposure below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risk to human health. The unit risk, Q1* $(mg/kg/day)^{-1}$, of pyrithiobac sodium is 1.05 $x\ 10^{-3}$ $(mg/kg/day)^{-1}$ in human equivalents based on male kidney tumors. Based on this upper bound potency factor (Q1*) and assuming a 70–year lifetime exposure, an upper-bound limit of a dietary carcinogenic risk is calculated in the range of 1 incidence in a billion (1.0×10^{-9}). This indicates a negligible cancer risk. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure of the U.S. population to pyrithiobac sodium residues.

2. *Infants and children*. In assessing the potential for additional sensitivity of infants and children to residues of pyrithiobac sodium, data from the previously discussed developmental and reproduction toxicity studies were considered. Developmental studies are designed to evaluate adverse effects on developing organism resulting from pesticide exposure during prenatal development. Reproduction studies provide information relating to reproductive and other effects on adults and offspring from prenatal and postnatal exposure to the pesticide. Based on the weight of these data, pyrithiobac sodium was not a

reproductive toxicant. Maternal and developmental effects (NOAELs, LOAELs) were comparable indicating no increase in susceptibility of developing organisms. FFDCA section 408 provides that EPA may apply an additional safety factor for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base. Based on current toxicological data requirements, the data base for pyrithiobac sodium relative to prenatal and postnatal effects for children is complete. Since the data indicate that infants and children are not more sensitive to exposure, the standard 100-fold safety factor was used. The NOAEL of 58.7 mg/kg/day from the 2–year rat study with pyrithiobac sodium, which was used to calculate the RfD, is lower than any of the NOAELs defined in the developmental and reproductive toxicity studies with pyrithiobac sodium. As stated above, aggregate exposure assessments utilized significantly less than 1% of the RfD for either the entire U.S. population or any of 22 population subgroups including infants and children. Therefore, it may be concluded that there is reasonable certainty that no harm will result to infants and children from aggregate exposure to pyrithiobac sodium residues.

F. International Tolerances

There are no established Codex MRLs for pyrithiobac sodium on cottonseed. An established Mexican tolerance for pyrithiobac sodium on cottonseed is identical to the U.S. tolerance. Compatibility of tolerance levels is not a issue at this time.

[FR Doc. 01–20133 Filed 8–9–01; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7029–8]

Notice of Availability: Final Guidance: Coordinating CSO Long-Term Planning With Water Quality Standards Reviews

AGENCY: Environmental Protection Agency (EPA).

ACTION: Availability of final guidance.

SUMMARY: This notice announces that the U.S. Environmental Protection Agency (EPA) is publishing the final Guidance: Coordinating CSO Long-Term Planning with Water Quality Standards Reviews. The guidance addresses questions raised since the publication of the CSO Control Policy in 1994 on coordinating the long-term control plan (LTCP) development process with the water quality standards review. As outlined in the guidance, EPA will continue to implement the CSO Control Policy through its existing statutory and regulatory authorities. The guidance cannot impose legally binding requirements on EPA, States, Tribes, or the regulated community. It cannot substitute for Clean Water Act (CWA) requirements, EPA's regulations, or the obligations imposed by consent decrees or enforcement orders.

ADDRESSES: Interested persons may obtain a copy of the guidance from the EPA's NPDES website at *www.epa.gov/npdes* or by contacting the Office of Water Resources Center at 202–260–7786 (e-mail: *center.water-resource@epa.gov*) or at U.S. Environmental Protection Agency, RC–4100, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please request Guidance: Coordinating CSO Long-Term Planning with Water Quality Standards Reviews (EPA Number EPA–833–R–01–002; July 2001).

FOR FURTHER INFORMATION CONTACT: Timothy Dwyer, U.S. Environmental Protection Agency, ICC Building (MC 4203M), 1200 Pennsylvania Avenue, NW., Washington, DC, 20460. E-mail address: dwyer.tim@epa.gov. Telephone: 202–564–0717.

SUPPLEMENTARY INFORMATION: EPA issued the Combined Sewer Overflow (CSO) Control Policy in April 1994 (59 FR 18688). To date, EPA has released seven guidance documents and worked with stakeholders to foster implementation of the Policy. The CSO Control Policy calls for the development of a long-term control plan (LTCP), which includes measures that provide for compliance with the Clean Water Act including attainment of water quality standards. The CSO Control Policy provides that the LTCP should be coordinated with the review and revision, as appropriate, of water quality standards and implementation procedures on CSO-impacted receiving waters. This process is intended to ensure that the long-term controls will be sufficient to meet water quality standards (59 FR 18694).

As part of EPA's FY 1999 Appropriation, Congress directed EPA to develop guidance on the conduct of water quality standards and designated use reviews for CSO-receiving waters, and urged EPA to provide technical and financial assistance to States and EPA Regions to conduct these reviews. Further, in December 2000, amendments to the Clean Water Act at section 402(q) required EPA to issue final guidance on this subject by July 31, 2001.

The objective of this guidance is to lay a strong foundation for coordinating CSO long-term control planning with water quality standards reviews. Reaching early agreement among interested parties on the data to be collected and the analyses to be conducted to support the long-term control plan development and water quality standards reviews can facilitate the review of water quality standards and the reconciliation of water quality standards with a well-designed and operated CSO control program.

The guidance describes the process for coordinating LTCP development and implementation with the water quality standards review. This process is the centerpiece of EPA's commitment to assure that both communities with combined sewer systems and States participate in implementing the water quality-based provisions in the CSO Control Policy. The CSO Control Policy anticipates the ''review and revision, as appropriate, of water quality standards and their implementation procedures when developing CSO control plans to reflect site-specific impacts of CSOs.'' Although this coordination is an intensive iterative process, it provides greater assurance that CSO communities will implement CSO control programs to help attain appropriate water quality standards.

This guidance was published as a draft in January 2001 and titled, Draft Guidance on Implementing the Water Quality-Based Provisions in the Combined Sewer Overflow Control Policy (66 FR 364; January 3, 2001). EPA received comments from 27 interested parties. EPA reviewed the comments and made appropriate changes to the draft guidance in response to the submitted comments.

Dated: August 3, 2001.

Diane Regas,

Acting Assistant Administrator for Water.

[FR Doc. 01–20126 Filed 8–9–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7028–3]

Proposed Cercla Administrative Cashout Settlement; City of New Bedford, Massachusetts, New Bedford Industrial Park Superfund Site

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of past and projected future response costs concerning the Bedford Industrial Park Superfund Site in New Bedford, Massachusetts with the following settling party: City of New Bedford, Massachusetts. The settlement requires the settling party to pay $165,538.03 to the Hazardous Substance Superfund plus an additional sum for interest on that amount calculated from June 30, 1998 through May 16, 2001. The settlement includes a covenant not to sue the settling party pursuant to Sections 106 and 107(a) of CERCLA,'' 42 U.S.C. 9606 and 9607(a). For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate.

The Agency's response to any comments received will be available for public inspection at One Congress Street, Boston, MA 02214–2023.

DATES: Comments must be submitted by September 10, 2001.

ADDRESSES: Comments should be addressed to the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region I, One Congress Street, Suite 1100, Mailcode RAA, Boston, Massachusetts 02203 and should refer to: In re: New Bedford Industrial Park Superfund Site, U.S. EPA Docket No. 01–2001–0053.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed settlement may be obtained from David Peterson, U.S. Environmental Protection Agency, Region I, Office of Environmental Stewardship, One Congress Street, Suite 1100, Mailcode SES, Boston, MA 02114–2023.

Dated: July 31, 2001.

Richard A. Cavagnero,

Acting Director, Office of Site Remediation & Restoration.

[FR Doc. 01–20125 Filed 8–9–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7028–6]

San Gabriel Superfund Site; Proposed Notice of Administrative Settlement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (CERCLA), 42 U.S.C. 9600 *et seq.*, notice is hereby given that a proposed Agreement and Covenant Not to Sue (Prospective Purchaser Agreement) associated with the San Gabriel Superfund Site was executed by the United States Environmental Protection Agency (EPA) on August 2, 2001. The proposed Prospective Purchaser Agreement would resolve certain potential claims of the United States under sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a) against Northrop Grumman Systems Corporation, a Delaware corporation, (the Purchaser). The Purchaser plans to acquire Aerojet-General Corporation's (Aerojet) electronics plant, comprising approximately seventy acres, located at 1100 West Hollyvale Avenue, Azusa, California within the Baldwin Park Operable Unit (BPOU) of the San Gabriel Valley Superfund Site. The Purchaser intends to use the plant for the design and manufacture of space-based sensors and smart weapons. The proposed settlement would provide the following benefits to EPA: (1) The Purchaser will pay EPA $325,000 in cash, to be held in reserve in a special account for future cleanup work at the BPOU, as needed; (2) Aerojet, a potentially responsible party at the BPOU, will pay EPA $9 million as partial reimbursement of its past costs to be held in the same special account for the same purposes; and (3) Aerojet's parent corporation, GenCorp Inc., will provide a written guaranty of $25 million to assure Aerojet's performance of future cleanup activities. Neither Aerojet nor GenCorp are signatories to the Prospective Purchaser Agreement, however they have agreed to the payment and guaranty to effect the sale.

For thirty (30) calendar days following the date of publication of this notice, EPA will receive written comments relating to the proposed settlement. If appropriate, prior to the expiration of this public comment period, EPA may provide an opportunity for a public meeting in the affected area. EPA's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105.

DATES: Comments must be submitted on or before September 10, 2001.

ADDRESSES: The proposed Prospective Purchaser Agreement and additional background documents relating to the settlement are available for public inspection at the U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105. The document can be accessed through the Internet on EPA Region 9's Website located at: *http://www.epa.gov/region09/waste/brown/ppa.html.*

A copy of the proposed settlement may be obtained from Lewis Maldonado, Senior Counsel (ORC–3), Office of Regional Counsel, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105. Comments should reference ''Northrop Grumman PPA, San Gabriel Superfund Site'' and ''Docket No. 2001–15'' and should be addressed to Lewis Maldonado at the above address.

FOR FURTHER INFORMATION CONTACT: Lewis Maldonado, Senior Counsel (ORC–3), Office of Regional Counsel, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105; phone: (415) 744–1342; fax (415)744–1041; e-mail: *maldonado.lewis@epa.gov.*

Dated: August 2, 2001.

John Kemmerer,

Acting Director, Superfund Division, U.S. EPA, Region IX.

[FR Doc. 01–20137 Filed 8–9–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1370–DR]

Minnesota; Amendment No. 9 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Minnesota, (FEMA–1370–DR), dated May 16, 2001, and related determinations.

EFFECTIVE DATE: July 31, 2001.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery Directorate, Federal

Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Minnesota is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 16, 2001:

Fond du Lac Indian Reservation, Mille Lacs Indian Reservation, and Red Lake Indian Reservation for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Joe M. Allbaugh,

Director.

[FR Doc. 01–20070 Filed 8–9–01; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1386–DR]

Virginia; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Virginia (FEMA–1386–DR), dated July 12, 2001, and related determinations.

EFFECTIVE DATE: August 1, 2001.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given of the reopening of the incident period for this disaster. The incident period for this declared disaster is now July 8, 2001, and continuing.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Joe M. Allbaugh,

Director.

[FR Doc. 01–20073 Filed 8–9–01; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1386–DR]

Virginia; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Virginia, (FEMA–1386–DR), dated July 12, 2001, and related determinations.

EFFECTIVE DATE: August 1, 2001.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Virginia is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 12, 2001: Buchanan, Dickenson, Russell, Scott, Smyth, and Wise Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Joe M. Allbaugh,

Director.

[FR Doc. 01–20074 Filed 8–9–01; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1378–DR]

West Virginia; Amendment No. 10 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of West Virginia (FEMA–1378–DR), dated June 3, 2001, and related determinations.

EFFECTIVE DATE: July 31, 2001.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given of the reopening of the incident period for this disaster. The incident period for this declared disaster is now May 15, 2001, and continuing.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program).

Joe M. Allbaugh,

Director.

[FR Doc. 01–20071 Filed 8–9–01; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1378–DR]

West Virginia; Amendment No. 11 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of West Virginia, (FEMA–1378–DR), dated June 3, 2001, and related determinations.

EFFECTIVE DATE: July 31, 2001.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of West Virginia is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 3, 2001:

Greenbrier and Nicholas Counties for Individual and Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Joe M. Allbaugh,

Director.

[FR Doc. 01–20072 Filed 8–9–01; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 27, 2001.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. John Gary Rosholt, Stevens Point, Wisconsin; to acquire additional voting shares of Rosholt Bancorporation, Inc., Rosholt, Wisconsin, and thereby indirectly acquire additional voting shares of Community First Bank, Rosholt, Wisconsin.

B. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Davis Bancshares Limited Partnership, Rapid City, South Dakota; to retain voting shares of Belle Fourche Bancshares, Inc., Belle Fourche, South Dakota, and thereby indirectly retain voting shares of Pioneer Bank & Trust, Belle Fourche, South Dakota.

Board of Governors of the Federal Reserve System, August 7, 2001.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 01–20146 Filed 8–9–01; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 4, 2001.

A. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. State Bank of Winfield Employee Stock Ownership Plan & Trust, Winfield, Kansas; to become a bank holding company by acquiring 32.45 percent of the voting shares of State Financial Investments, Inc., and thereby indirectly acquiring an interest in The State Bank, both of Winfield, Kansas.

2. Team Financial Acquisition Subsidiary, Inc., Paola, Kansas; to acquire 100 percent of the voting shares of Post Bancorp, Inc., and thereby indirectly acquiring Colorado Springs National Bank, both of Colorado Springs, Colorado.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. BOTH, Inc., Kerrville, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of BOTH of Delaware, Inc., Wilmington, Delaware, and thereby indirectly acquiring Bank of the Hills, N.A., Kerrville, Texas.

In connection with this application, BOTH of Delaware, Inc., Wilmington, Delaware; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of the Hills, N.A., Kerrville, Texas.

Board of Governors of the Federal Reserve System, August 6, 2001.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 01–20056 Filed 8–9–01; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[CMS–1107–N]

Medicare and Medicaid Programs; Notice for the Solicitation of Proposals for the Private, For-Profit Demonstration Project for the Program of All-Inclusive Care for the Elderly (PACE)

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice for solicitation of proposals.

SUMMARY: This notice solicits proposals from private, for-profit organizations for a fully capitated joint Medicare and Medicaid demonstration program. The purpose of this demonstration is to determine whether the risk-based long-term care model employed by the nonprofit Programs of All-Inclusive Care for the Elderly (PACE) can be replicated successfully by for-profit organizations

in various communities nationwide with comparable costs, quality, and access to services. The PACE model focuses on frail community dwelling elderly, most of whom are dually eligible for Medicare and Medicaid, and all of whom are assessed as being eligible for nursing home placement according to their State's standards. The program of care includes as core services the provision of adult day care and case management through which a multidisciplinary team coordinates all health and long-term care services for a participant. This demonstration will include a maximum of 10 for-profit demonstration sites.

DATES: *Letters of Intent:* We will begin accepting letters of intent from interested private, for-profit organizations beginning on August 10, 2001. *Proposals:* We will accept proposals beginning December 10, 2001. An unbound original and 10 copies must be submitted.

ADDRESSES: Letters of intent and proposals should be mailed to the following address: Department of Health and Human Services, Centers for Medicare & Medicaid Services, Attention: Michael Henesch, Project Officer, Center for Health Plans and Providers, Room C4–17–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

FOR FURTHER INFORMATION CONTACT: Michael Henesch at (410) 786–6685, or by e-mail at *mhenesch@cms.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. Legislative History

On Lok Senior Health Systems, located in San Francisco's Chinatown, began operating in 1971. The intent of the program was to enable the frail elderly to remain in the community and live at home. Participants were transported to an adult day care center a few times a week where they visited their physicians, received supportive services, and socialized with other elderly community members.

Under section 9412(b) of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509), the Congress authorized a demonstration program of all-inclusive care for the frail elderly for nonprofit entities that sought to replicate the model developed by On Lok in various communities nationwide. The demonstration came to be known as the Program of All-Inclusive Care for the Elderly (PACE) demonstration. The On Lok protocol was used as the guiding principle for creating new PACE sites, and the demonstration eventually grew to 26 sites, including On Lok, in 14 States.

Section 4801 of the Balanced Budget Act of 1997 (BBA) (Pub. L. 105–33) authorized coverage of PACE under the Medicare program. It amended title XVIII of the Social Security Act (the Act) by adding section 1894, which addresses Medicare payment to, and coverage of benefits under, PACE. Section 4802 of the BBA authorized the establishment of PACE as a State option under Medicaid. It amended title XIX of the Act by adding section 1934, which directly parallels the provisions of section 1894. Section 4803 of the BBA addresses implementation of PACE under both Medicare and Medicaid, the effective date, timely issuance of regulations, priority and special consideration in processing applications, and transition from PACE demonstration project status. On November 24, 1999, we published an interim final rule with comment period, ''Program of All-Inclusive Care for the Elderly (PACE)'' (64 FR 66234) that establishes the nonprofit PACE demonstration as a permanent provider program under Medicare and Medicaid. These PACE regulations appear at 42 CFR Part 460—Programs of All-Inclusive Care for the Elderly.

B. Nonprofit Program Versus For-Profit Demonstration

Section 4804(a)(2) of the BBA requires us to conduct a study to compare the costs, quality, and access to services provided by for-profit entities to those of nonprofit PACE providers. The for-profit entities must operate under demonstration project waivers granted under sections 1894(h) and 1934(h) of the Act.

The protocol developed by On Lok contained the program's guiding principles and was used to review the proposals for nonprofit PACE demonstrations. Section 4801(h)(2)(A) of the BBA states that the terms and conditions for the for-profit PACE program must be the same as those for PACE providers that are nonprofit, private organizations except that only 10 waivers may be granted (section 4801(h)(2)(B) of the BBA). Under the demonstration for for-profit entities, the existing PACE regulations at part 460 for nonprofit, private entities, will be the primary standard against which proposals will be reviewed.

C. Program Regulations for Nonprofit Entities

The description below summarizes key components of the November 24, 1999 final rule for the nonprofit organization PACE program.

- State's Role

An interested organization should contact the State Administering Agency in coordination with the State Medicaid Agency about applying to participate in the PACE demonstration. The PACE demonstration is intended to be a three-way partnership between us, the States, and the PACE organizations. The State plays an integral role in not only the process for reviewing a proposal, but in the monitoring of an organization and the annual certification of a participant's eligibility. We will review a proposal after we receive an assurance from the State Administering Agency indicating that it considers the applicant qualified to be a PACE organization and that the State is willing to enter into a PACE Program Agreement with the applicant.

- General

A PACE participant must meet the State's nursing facility eligibility criteria, be 55 years of age or older, be a resident of the PACE organization's service area, and be assessed by the PACE organization's multidisciplinary team. The multidisciplinary team must consist of a primary care physician, registered nurse, social worker, physical therapist, occupational therapist, dietitian, home care coordinator, PACE center manager, recreational therapist or activity coordinator, driver, and personal care attendant. Except for the physical therapist, occupational therapist, driver, and dietitian, the members of the multidisciplinary team must be employed by the PACE organization. A waiver may be granted by the State Administering Agency and us as specified in § 460.102(g). The multidisciplinary team assesses each participant during the intake process, and develops a plan of care tailored to that individual's needs as specified in §§ 460.104 and 460.106. On at least a semi-annual basis, the multidisciplinary team must reassess the participant and reevaluate the participant's plan of care, including defined outcomes, and make changes as necessary.

A PACE organization must operate at least one PACE center and should either own or contract with at least one hospital, nursing home, and transportation service. The PACE organization must provide primary care, social services, restorative therapies, personal care and supportive services, nutritional counseling, and meals at the PACE center. A PACE participant must be able to access services 24 hours a day, 365 days a year. The PACE organization's responsibility for the participant extends beyond the PACE

center. If the participant requires help cooking, cleaning, bathing, *etc.,* a home visit must be arranged by the PACE organization. If the center's physicians are unable to treat a participant for a particular condition, the organization must pay for treatment by an outside specialist or provider. In addition to the provision of all Medicare and Medicaid services, without the usual limitations and conditions, the PACE service package must include all primary, acute, and long-term care necessary to improve or maintain the participant's health status with the exceptions specified in §§ 460.94 and 460.96. Section 1894(b)(1)(A) of the Act prohibits the use of deductibles, copayments, coinsurance, or cost sharing in this program. The capitation rate covers all of the costs related to the participant's care.

The PACE program seeks to enhance the quality of life and autonomy of the participant, while maximizing the dignity of, and respect for, older adults and elderly persons. A PACE program's success hinges on conscientious preventative care to avoid costly hospital and nursing home stays. It is the attentiveness of the multidisciplinary team and the preventative care and social interaction at the PACE center that helps participants to avoid acute and long-term care settings.

• Payment

The nonprofit entities are currently paid the Medicare+Choice rate (§ 460.180) multiplied by a frailty adjuster of 2.39 for all PACE participants except those diagnosed with end-stage renal disease (ESRD). Payments for persons with ESRD are paid the ESRD statewide rate book amount multiplied by PACE specific adjustors of 1.46 for part A and 1.36 for part B. At the present time, we are developing a specific risk adjustment methodology to apply to the PACE program that is expected to change the payment methodology in the future.

States that elect PACE set Medicaid rates subject to Federal regulations. Each State develops a payment amount based on the cost of comparable services for the State's nursing-facility-eligible population. The amount is generally based on a blend of the cost of nursing home and community-based care for the frail elderly. The monthly capitation payment amount is negotiated between the PACE organization and the State Administering Agency and must be less than the amount that is paid under the State plan if the participant is not enrolled in the PACE program.

II. Provisions of This Notice

A. Purpose

This notice solicits proposals from for-profit entities to demonstrate that they can successfully provide comprehensive coordinated care for the frail elderly under a prepaid fully capitated payment system.

B. Duration of the Demonstration

The demonstration will operate for 3 years. There is no authority for payment to for-profit entities outside of this demonstration, absent a change in the law. Participating programs must be prepared to disenroll participating beneficiaries at that time subject to the requirements of §§ 460.166 and 460.168. Under section 4804(b)(2) of the BBA, an evaluation of the demonstration comparing the for-profit entities to the nonprofit entities must be conducted. A CMS contractor will design and conduct an evaluation of the demonstration.

C. Requirements for Proposal Submission

We will only consider proposals from for-profit organizations. Interested applicants must submit a proposal that provides a comprehensive array of benefits and must be willing to assume full financial risk for all primary, acute, and long-term care. A PACE organization must accept both Medicare and Medicaid capitation to participate, although individual participants who are not eligible for Medicare or Medicaid may enroll in the program. We will consider only one site per proposal and define a site as one contiguous service area.

D. Proposal Process

Proposals will be accepted until we choose 10 sites. After we have chosen 10 sites, we will notify the organization that submits a letter of intent that the limit of approved sites has been reached. We recommend the following steps to expedite a proposal submission:

Step One

An organization that wishes to apply to participate in the demonstration should review the PACE program regulations for nonprofit organizations at Part 460 (Programs of All-Inclusive Care for the Elderly), which can be accessed from various sources including websites *www.jcfa.gov/medicare (or Medicaid)/PACE/pacehmpg.htm* or *www.access.gpo.gov/mara/index.html,* or by calling 1–888–293–6498. These regulations should serve as the organization's guiding principles during the development of a demonstration proposal for a PACE program. A successful proposal will be one that satisfies the requirements of the PACE program regulations.

Step Two

An applicant interested in pursuing participation should send a letter of intent to us and to their State Medicaid Agency. An applicant should collaborate with the State in developing its proposal. The for-profit organization should submit a complete proposal, along with 6 copies, to its State Medicaid Agency.

Step Three

Once the State agrees to enter into a PACE program agreement with the for-profit organization, the applicant should submit a proposal to us. In addition, the applicant should include a letter obtained from the State indicating that the State considers the applicant qualified to be a PACE organization and that it is willing to participate in the demonstration.

III. Final Selection

A review panel will perform an independent review of proposals and will make recommendations based on organizational capabilities, fiscal soundness, service delivery, quality improvement plan, and data collection and record maintenance capabilities.

Our Administrator will make a final decision on awards taking into consideration proposals that observe the following priority areas:

1. An applicant should be able to serve the frail elderly in geographical areas that are currently not being served. Sections 1894(e)(2)(B) and 1934(e)(2)(B) of the Act state that we may exclude from designation an area that is already covered under another PACE program agreement. This is to avoid unnecessary duplication of services and avoid impairing the financial and service viability of an existing program. The organization's State Administering Agency will also be able to provide technical assistance on this issue.

2. We would prefer to have a rural site participate to determine if these sites are viable and how the sites differ from existing nonprofit entities.

3. We would prefer to limit sites to one for-profit organization per State.

4. We encourage for-profit entities of all organizational types to apply. We would prefer to have a variety of sites with differing organizational structures and backgrounds to participate in the demonstration.

5. Finally, considering that this program grew out of a community's interest in enabling its elderly members to age in a community-based setting,

and the program's emphasis on community involvement, we would prefer for-profit organizations that have a longstanding relationship with the community they serve to participate in the demonstration.

In reviewing the proposals, we will give greatest consideration to an organization's development of policies and procedures. Due to the short time frame of this demonstration and the frailty of the population, we need to be certain that the organization can anticipate potential problems and is prepared to handle the problems efficiently and effectively. In addition, these policies and procedures will increase quality by providing safeguards to protect the beneficiaries.

We reserve the right to conduct site visits to the awardee's location before making awards. An independent contractor, selected and funded by us, will design and conduct an evaluation. The awardee will be required to cooperate with the contractor conducting the evaluation.

IV. Collection of Information Requirements

As referenced in this notice, we will award up to 10 sites. However, given that we expect less then 10 proposals on an annual basis and the proposals are not standardized, the requirements referenced in this notice do not meet the definition of an information collection, as defined under 5 CFR 1320.3(c) and as such are not subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Authority: Sections 1894(h) and 1934(h) of the Social Security Act (42 U.S.C. 1395eee and 1396u–4)

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; No. 93.773 Medicare-Hospital Insurance Program; and No. 93.774, Medicare-Supplementary Medical Insurance Program)

Dated: August 6, 2001.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 01–20049 Filed 8–9–01; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Notice of Hearing: Reconsideration of Disapproval of New York State Plan Amendment (SPA) 96–40a

AGENCY: Center for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on October 3, 2001; 10 a.m.; Room 38–110a; Thirty-Eighth Floor; Jacob Javits Federal Building; 26 Federal Plaza; New York, New York 10278, to reconsider our decision to disapprove New York SPA 96–40a.

CLOSING DATE: Requests to participate in the hearing as a party must be received by the presiding officer by August 27, 2001.

FOR FURTHER INFORMATION CONTACT: Kathleen Scully-Hayes, Presiding Officer, CMS C1–09–13, 7500 Security Boulevard, Baltimore, Maryland 21244; Telephone: (410) 786–2055.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove New York SPA 96–40a. New York submitted this SPA on September 30, 1996. The issue is whether the effective date of a change in the method of Medicaid payment that increases Medicaid payments to hospitals may be earlier than the first day of the calendar quarter in which New York submitted a SPA for approval by the Secretary. This amendment proposes to increase payments under the Medicaid State plan by reclassifying certain amounts, originally paid outside the scope of the Medicaid program by State contractors for the cost of care for persons eligible for the State Home Relief program, as Medicaid disproportionate share hospital (DSH) payments. As the State's public notice made clear, the proposed change in Medicaid payment methodology was not simply to use an intermediary to make payments already authorized under the existing State plan, but would increase Medicaid payments by adding to the DSH payments to certain hospitals. Federal regulations at 42 CFR 447.256(c) and 430.20(b), however, preclude the Centers for Medicare & Medicaid Services (CMS), formerly the Health Care Financing Administration, from approving a SPA that changes the method of payment prior to the first day of the calendar quarter in which the SPA was submitted. In addition, Federal regulations at 42 CFR 447.205(a) require a State to provide public notice of any significant proposed change in its methods and standards for setting payment rates for services. Federal regulations at 42 CFR 447.205(d) require that the notice be published before the proposed effective date of the change. Therefore, the earliest permissible effective date for this amendment based on the date of public notice (i.e., September 25, 1996) and on the calendar quarter in which the SPA was submitted (i.e., September 30, 1996), was September 26, 1996. After consulting with the Secretary as required by 42 CFR 430.15(c), CMS informed New York of its decision to disapprove this amendment. SPA 96–40a was originally submitted as SPA 96–40, which affected DSH payments beginning on July 1, 1994. CMS suggested the State split the original amendment into two separate amendments to allow payments beginning on September 26, 1996, to be approved. The State agreed to this suggestion. The first amendment, 96–40a, affects Medicaid payments from July 1, 1994, through September 25, 1996, and was disapproved by CMS on May 14, 2001, after consultation with the Secretary as required under 42 CFR430.15(c)(2). The second amendment, 96–40b, affecting Medicaid payments from September 26, 1996, forward, was approved.

The notice to New York announcing an administrative hearing to reconsider the disapproval of its SPA reads as follows:

Dr. Antonia C. Novello,

Commissioner, New York State Department of Health, Corning Tower, Empire State Plaza, Albany, New York 12237.

Dear Dr. Novello: I am responding to your request for reconsideration of the decision to disapprove New York State Plan Amendment (SPA) 96–40a. This SPA was submitted on September 30, 1996.

The issue is whether the effective date of a change in the method of Medicaid payment that increases Medicaid payments to hospitals may be earlier than the first day of the calendar quarter in which New York submitted a SPA for approval by the Secretary. This amendment proposes to increase payments under the Medicaid State plan by reclassifying certain amounts, originally paid outside the scope of the Medicaid program by State contractors for the cost of care for persons eligible for the State Home Relief program, as Medicaid disproportionate share hospital (DSH) payments. As the State's public notice made clear, the proposed change in Medicaid payment methodology was not simply to use an intermediary to make payments already authorized under the existing State plan, but would increase Medicaid payments by adding to the DSH payments to certain hospitals.

The State requested an effective date of July 1, 1994. Federal regulations at 42 CFR 447.256(c) and 430.20(b), however, preclude the Centers for Medicare & Medicaid Services (CMS) (formerly the Health Care Financing Administration) from approving a SPA that changes the method of payment prior to the first day of the calendar quarter in which the SPA was submitted. In addition, Federal regulations at 42 CFR 447.205(a) require a State to provide public notice of any significant proposed change in its methods and standards for setting payment rates for services. Federal regulations at 42 CFR 447.205(d) require that the notice be published before the proposed effective date of the change. Therefore, the earliest permissible effective date for this amendment based on the date of public notice (i.e., September 25, 1996) and on the calendar quarter in which the SPA was submitted (i.e, September 30, 1996), was September 26, 1996. After consulting with the Secretary as required by 42 CFR 430.15(c), CMS informed New York of its decision to disapprove this amendment.

The SPA 96–40a was originally submitted as SPA 96–40, which affected DSH payments from July 1, 1994, forward. CMS suggested the State split the original amendment into two separate amendments to allow payments beginning on September 26, 1996, to be approved. The State agreed to this suggestion.

The first amendment, 96–40a, affects Medicaid payments from July 1, 1994, through September 25, 1996, and based on the above, was disapproved on May 14, 2001. The second amendment, 96–40b, affecting Medicaid payments from September 26, 1996, forward, was approved.

I am scheduling a hearing on your request for reconsideration to be held on October 3, 2001, at 10:00 a.m. in Room 38–110a; Thirty-Eighth Floor; Jacob Javits Building; 26 Federal Plaza; New York, New York 10278. If this date is not acceptable, we will be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed at 42 CFR, Part 430.

I am designating Ms. Kathleen Scully-Hayes as the presiding officer. If these arrangements present any problems, please contact the presiding officer. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the presiding officer to indicate acceptability of the hearing date that has been scheduled and provide names of the individuals who will represent the State at the hearing. The presiding officer may be reached at (410) 786–2055.

Sincerely,

Ruben J. King-Shaw, Jr.,

Deputy Administrator and Chief Operating Officer, Centers for Medicare & Medicaid Services.

Section 1116 of the Social Security Act (42 U.S.C. section 1316); (42 CFR section 430.18)

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: August 7, 2001.

Ruben J. King-Shaw, Jr.,

Deputy Administrator and Chief Operating Officer, Centers for Medicare & Medicaid Services.

[FR Doc. 01–20236 Filed 8–9–01; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Veterinary Medicine 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). The meeting will be open to the public.

Name of Committee: Veterinary Medicine 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 September 13 and 14, 2001, from 8:30 a.m. to 5 p.m.

Location: The DoubleTree Hotel, Plaza Rooms I, II, and III, 1750 Rockville Pike, Rockville, MD.

Contact: Aleta Sindelar, Center for Veterinary Medicine (HFV–3), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301–827–4515, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572) in the Washington, DC area), code 12546. Please call the Information Line for up-to-date information on this meeting.

Agenda: On September 13 and 14, 2001, the committee will seek recommendations on the issue of import tolerances under the provisions of the Animal Drug Availability Act of 1996 (ADAA). The ADAA authorizes FDA to establish drug residue tolerances (import tolerances) for imported food products of animal origin for drugs that are used in exporting countries, but that are unapproved new animal drugs in the United States. Food products of animal origin that are in compliance with the import tolerance may be imported into the United States. Elsewhere in this issue of the **Federal Register**, FDA is publishing an advance notice of proposed rulemaking (ANPRM) that details the consideration of proposing a regulation for establishing import tolerances. The agency intends to consider the comments made at the advisory committee meeting and the written comments received in response to the ANPRM in drafting the proposed regulation. The comments should be sent to Docket No. 01N–0284. Background information including the legislative history for import tolerances, the domestic regulation of drug residues, and enforcement issues will be made available to the Veterinary Medicine Advisory Committee members and the public in advance of the meeting and posted on the Center for Veterinary Medicine home page (http://www.fda.gov/cvm). A limited number of paper copies of the background information will be available at the registration table on September 13, 2001.

Procedure: Interested persons may present data, information, or views, orally or in writing, on the import tolerance issue pending before the committee. Written submissions may be made to the contact person by August 31, 2001. Oral presentations from the public are tentatively scheduled for the afternoon of September 14, 2001. The time allotted for each presentation may be limited. Those desiring to make oral presentations should notify the contact person before August 31, 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. You will be notified of your allotted time prior to the meeting. Your entire statement should be submitted for the record.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: July 13, 2001.

Bonnie H. Malkin,

Special Assistant to the Senior Associate Commissioner.

[FR Doc. 01–20160 Filed 8–8–01; 11:44 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Minor Adjustment of Kodiak National Wildlife Refuge Boundary

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of boundary adjustment.

SUMMARY: The Secretary of the Interior, acting through the Regional Director, Region 7, of the Fish and Wildlife Service, has made a minor modification to the boundary of the Kodiak National

Wildlife Refuse in the State of Alaska. This boundary adjustment was made to incorporate within the Refuge a parcel of land, purchased by the United States, which is adjacent to the former Refuge boundary. This action added 2,793 acres to the Refuge.

DATES: Title to the land in question vested in the United States of America on November 23, 1998. Notification to Congress of the proposed boundary change was provided August 22, 2000.

ADDRESSES: Division of Realty, Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503–6199.

FOR FURTHER INFORMATION CONTACT: Sharon N. Janis, 907–786–3490.

SUPPLEMENTARY INFORMATION: In 1998, approximately 3,159.29 acres of land were acquired from Afognak Joint Venture by the United States, for administration by the Fish and Wildlife Service. Of the 3,159.29 acres, approximately 2,793 acres lie outside, but adjacent to, the boundaries of the Kodiak National Wildlife Refuge as established by the Alaska National Interest Lands Conservation Act. These lands are located in Section 36, Township 19 South, Range 21 West; Sections 7, 18, 19, and 30, Township 20 South, Range 20 West; and Sections 1, 2, 11, 13, 14, 24, and 25, Township 20 South, Range 21 West, Seward Meridian, Alaska.

Section 103(b) of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3103(b)) establishes authority for the Secretary of the Interior to make minor boundary adjustments to the Wildlife Refuges created by the Act. Under this authority, and following due notice to Congress, the Secretary, acting through the Regional Director, Region 7, of the Fish and Wildlife Service, has used this authority to adjust the boundaries of the Kodiak Refuge to include the 2,793 acres of land referenced above. This adjustment modifies the boundary previously described in the **Federal Register** (48 FR 7966, Feb. 24, 1983).

David. B. Allen,

Regional Director.

[FR Doc. 01–20096 Filed 8–9–01; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–670–01–1610–JP–064B, C00–0927 WHA–ADR]

Temporary Closure of Federal Land

AGENCY: Bureau of Land Management, Interior.

ACTION: Pursuant to Title 43 Code of Federal Regulations 8364.1, the Bureau of Land Management proposes to temporarily close parts of Federal land in Imperial County to camping to protect the resources, desert tortoise habitat and its associated plants and wildlife. The public land areas described below are approximately 40 square miles of public lands east of Glamis, Imperial County, California.

SUMMARY: The Bureau of Land Management (BLM) proposes to temporarily close an area of public land to camping in Imperial County. The area lies east of the Imperial Sand Dunes Recreation Management Area and is specifically described below. This proposed closure is to provide interim protection for a threatened species, the desert tortoise (Gopherus agassizi). By taking this interim action, BLM contributes to the conservation of a threatened species in accordance with Section 7(a)(1) of the Endangered Species Act (ESA), 16 U.S.C 1536(a)(1). BLM also avoids making any irreversible commitment of resources which would foreclose any reasonable and prudent alternatives which might be required as a result of the consultation on the amendment to the CDCA Plan in accordance with Section 7(d) of ESA, 16 U.S.C 1536(d). The proposed closure would remain in effect until a Record of Decision is signed on the North Eastern Colorado Desert Bio-regional Plan which is anticipated in September 2002.

While the area would be closed to camping, driving on existing routes of travel would still be authorized. In addition, the proposed closure does not apply to private lands within the described area.

The area of the camping closure is a contiguous area described in two parts. Part 1: To the north of State Highway 78 (78), an area bounded on the south by 78, on the west by Ted Kipf Road, on the east by the Union Pacific Railroad tracks (UPRR), and on the north by a connecting line between Ted Kipf Road and the UPRR at a point 12 miles northwest of 78. Part 2: An area north and south of 78, bounded in part to the southwest by the UPRR, to the extreme southeast by Olgilby Road, and to the northeast by the private property of the Mesquite Mine; and further bounded outboard to the north and east to a point of one (1) mile and parallel to the pattern and connections of the following three roads—78, Vista Mine Road, and Ted Kipf.

The Order for closure will be posted in the appropriate BLM Offices and at places near and/or within the area to which the closure or restriction applies (see El Centro Field Office at end of this Notice).

DATES: No sooner than 30-days after publication of this notice, a **Federal Register** Notice of final decision will be published.

SUPPLEMENTARY INFORMATION: On March 16, 2000, the Center for Biological Diversity, and others (Center) filed for injunctive relief in U.S. District Court, Northern District of California (Court) against BLM alleging that BLM was in violation of Section 7 of ESA, 16 U.S.C 1536, by failing to enter into formal consultation with the FWS on the effects of adoption of the California Desert Conservation Area Plan (CDCA Plan), as amended, upon threatened and endangered species. On August 25, 2000, BLM acknowledged through a Court stipulation that activities authorized, permitted, or allowed under the CDCA Plan may adversely affect threatened and endangered species, and that BLM is required to consult with the U.S. Fish and Wildlife Service (USFWS) to insure that adoption and implementation of the CDCA Plan is not likely to jeopardize the continued existence of threatened and endangered species or to result in the destruction or adverse modification of critical habitat of listed species.

Although BLM has received biological opinions on selected activities, consultation on the overall CDCA Plan is necessary to address the cumulative effects of all the activities authorized by the CDCA Plan. Consultation on the overall Plan is complex and the completion date is uncertain. Absent consultation on the entire Plan, the impacts of individual activities, when added together with the impacts of other activities in the desert, are not known. The BLM entered into negotiations with plaintiffs regarding interim actions to be taken to provide protection for endangered and threatened species pending completion of the consultation on the CDCA Plan. Agreement on these interim actions avoided litigation of plaintiffs' request for injunctive relief and the threat of an injunction prohibiting all activities authorized under the Plan. These interim agreements have allowed BLM to continue to authorize appropriate levels of activities throughout the planning area during the lengthy consultation process while providing appropriate protection to the desert tortoise and other listed species in the short term. By taking interim actions as allowed under 43 CFR Subpart 8364, BLM contributes to the conservation of endangered and threatened species in accordance with

Section 7(a)(1) of the ESA. BLM also avoids making any irreversible or irretrievable commitment of resources which would foreclose any reasonable and prudent alternative measures which might be required as a result of the consultation on the CDCA plan in accordance with Section 7(d) of the ESA. Closure of camping in the vicinity of the Algodones Dunes was included in the settlement stipulation concerning All Further Injunctive Relief.

The EA concerning this closure is available for a 15 day review period beginning approximately 1 week after publication of this notice. Interested parties should contact the Field Office Manager for a copy and the review schedule. The documents will also be available for review at the BLM web site www.ca.blm.gov. Written comments may be sent to the address listed below in this notice.

The BLM proposes a camping closure to reduce impacts to desert tortoise habitat and its associated plants and wildlife. This closure would impact several hundred campers and approximately 40 square miles of land. Vehicle traffic in this area is adversely impacting desert tortoise habitat to a noticeable extent. The use is increasing to outlying areas. Such use is not consistent with the area's limited use classification which limits OHV activity in this area. Currently, the area immediately east of Glamis and described above in this notice is noticeably impacted by OHV activity. The goal is to restore the desert habitat.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Roxie Trost, BLM, El Centro Field Office, 1661 S. 4th Street, El Centro , CA 92243, telephone (760) 337 4400.

Dated: August 3, 2001.

Roxie C. Trost,

Acting Field Manager.

[FR Doc. 01–20176 Filed 8–9–01; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of an extension of a currently approved information collection (OMB Control Number 1010–0090).

SUMMARY: To comply with the Paperwork Reduction Act (PRA) of 1995, we are submitting to OMB for review and approval an information collection request (ICR), titled ''Stripper Royalty Rate Reduction Notification.'' We are also soliciting comments from the public on this ICR.

DATES: Submit written comments on or before September 10, 2001.

ADDRESSES: Submit written comments directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (OMB Control Number 1010–0090), 725 17th Street, NW., Washington, DC 20503. Also, submit copies of your written comments to Carol Shelby, Regulatory Specialist, Minerals Management Service, MS 320B2, P.O. Box 25165, Denver, Colorado 80225. If you use an overnight courier service, our courier address is Building 85, Room A–614, Denver Federal Center, Denver, Colorado 80225. You may also submit your comments at our email address mrm.comments@mms.gov. Include the title of the information collection and the OMB control number in the ''Attention'' line of your comment. Also include your name and return address. Submit electronic comments as an ASCII file avoiding the use of special characters and any form of encryption. If you do not receive a confirmation that we have received your email, contact Ms. Shelby at (303) 231–3151 or FAX (303) 231–3385.

FOR FURTHER INFORMATION CONTACT: Carol Shelby, Regulatory Specialist, phone (303) 231–3151, FAX (303) 231–3385, email Carol.Shelby@mms.gov.

SUPPLEMENTARY INFORMATION:

Title: Stripper Royalty Rate Reduction Notification.

OMB Control Number: 1010–0090.

Bureau Form Number: Form MMS–4377.

Abstract: The Department of the Interior (DOI) is responsible for matters relevant to mineral resource development on Federal and Indian lands and the Outer Continental Shelf (OCS). The Secretary of the Interior (Secretary) is responsible for managing the production of minerals from Federal and Indian lands and the OCS, collecting royalties from lessees who produce minerals, and distributing the funds collected in accordance with applicable laws. The Secretary also has an Indian trust responsibility to manage Indian lands and seek advice and information from Indian beneficiaries. MMS performs the royalty management functions for the Secretary.

The Bureau of Land Management (BLM), the surface management agency for Federal onshore leases, grants royalty rate reductions to operators of stripper oil properties producing less than 15 barrels of oil per well-day (43 CFR 3103.4–1). The purpose of these royalty rate reductions is to encourage continued production, provide an incentive for enhanced oil recovery projects, discourage abandonment of properties producing less than 15 barrels of oil per well-day, and reduce the operator's expenses.

Because the royalty rate reductions affect the amount of revenues due the Federal Government, operators are required to notify MMS of the reduced royalty rate using Form MMS–4377, Stripper Royalty Rate Reduction Notification. The form requires identification of the operator, name of the contact person, lease and agreement numbers, calculated royalty rate, current royalty rate, qualifying period, and effective date of royalty rate reduction. MMS uses the information provided on the form to update our lease database with the royalty rates that are lower than those reflected in the lease instrument. The reduced royalty rate becomes effective for all oil production from qualifying properties the first day of the month after MMS receives notification of the rate change.

MMS is requesting an extension of this information collection in order to continue to (1) Receive notification of royalty rate reductions and (2) update our lease database with the correct royalty rates. Correct royalty rates are necessary to verify that the proper royalty amount has been paid on each lease.

Frequency: On occasion.

Estimated Number and Description of Respondents: 900 operators of low producing, stripper oil properties.

Estimated Annual Reporting and Recordkeeping ''Hour'' Burden: 800 hours. See the following chart for a breakdown of the burden estimate.

Citation 43 CFR 3103.4–2	Reporting requirement	Burden hours per response	Annual number of responses	Annual burden hours
(b)(3)(iii)(B)	The lower of the two rates shall be used for the current period provided that the operator notifies the MMS of the new royalty rate. The new royalty rate shall not become effective until the first day of the month after MMS receives notification. Notification shall be received on Form MMS–4377.	30 minutes per property	1,600 properties	800
Total		30 minutes	1,600 properties	800

Estimated Annual Reporting and Recordkeeping ''Non-hour'' Burden: We have identified no ''non-hour cost'' burden.

Comments: Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.*) requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *.'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, on April 6, 2001, we published a **Federal Register** notice (66 FR 18297) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. We received one comment. We have responded to the comment in our ICR submission for OMB approval. We have posted a copy of the ICR at our Internet web site http://www.mrm.mms.gov/Laws_R_D/FRNotices/FRInfColl.htm. We will also provide a copy of the ICR to you without charge upon request.

If you wish to comment in response to this notice, send your comments directly to the offices listed under the **ADDRESSES** section of this notice. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by September 10, 2001. The PRA provides that 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.

Public Comment Policy: We will post all comments received in response to this notice on our Internet web site at http://www.mrm.mms.gov/Laws_R_D/InfoColl/InfoColCom.htm for public review. We also make copies of these comments, including names and addresses of respondents, available for public review during regular business hours at our offices in Lakewood, Colorado.

Individual respondents may request that we withhold their home address from the public record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the public record a respondent's identity, as allowable by law. If you request that we withhold your name and/or address, state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: July 31, 2001.

Lucy Querques Denett,

Associate Director for Minerals Revenue Management.

[FR Doc. 01–20100 Filed 8–9–01; 8:45 am]

BILLING CODE 4310–MR–W

INTERNATIONAL TRADE COMMISSION

[USITC SE–01–029]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: August 17, 2001 at 11 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none.

2. Minutes.

3. Ratification List.

4. Inv. Nos. 701–TA–404 and 731–TA–898 and 905 (Final)(Hot-Rolled Steel Products from Argentina and South Africa)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on August 27, 2001.)

5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: August 8, 2001.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–20222 Filed 8–8–01; 11:47 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Aerospace Vehicle Systems Institute (''AVSI'') Cooperative

Notice is hereby given that, on June 18, 2001, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Aerospace Vehicle Systems Institute (''AVSI'') Cooperative has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership and project status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, TRW Ltd., Shirley, West Midlands, United Kingdom, acting through its TRW Aeronautical Systems division, Solihull, United Kingdom has been added as a party to this venture. Additionally, the AVSI Cooperative intends to undertake the following joint research projects:

''No Fault Found and Maintenance Costs''—To combine avionics component in-service information from systems suppliers, OEMs and airline operators to develop a better understanding of No Fault Found in LRU maintenance operations to improve system/LRU diagnostic and maintenance practices. This data will be used with a standard life cycle cost prediction tool to study how design changes can improve product reliability.

''LRU Reliability Differences Between Business, Commercial & Cargo Jets''—to investigate the in-service performance of selected airplane systems components in diverse operational situations to better understand how varied operational conditions can cause performance degradation or excessive maintenance.

''Wireless Communications for Aircraft Systems''—to develop and validate an analytical/simulation model to predict the performance of wireless communications within the environment of a generic airplane to assess the viability of wireless communication technology to inter link essential or critical aircraft systems.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and the AVSI Cooperative intends to file additional written notification disclosing all changes in membership.

On November 18, 1998, the AVSI Cooperative filed its original notifications pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 18, 1999 (64 FR 8123).

The last notification was filed with the Department on November 7, 2000. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 2, 2001 (66 FR 13080).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 01–20093 Filed 8–9–01; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1933—The ATM Forum

Notice is hereby given that, on July 5, 2001, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), The ATM Forum has filed written notifications simultaneously with the Attorney General and Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. The following principal member has downgraded to an auditing member: Virata Ltd., Cambridge, United Kingdom. The following members have been involved in acquisitions: Trillium Digital Systems acquired Intel, Candler, AZ; and Global Knowledge, Cary, NC acquired Institute Eris, Massy Cedex, FRANCE. Also, OKI Network Technologies, Hackensack, NJ; Sony Corporation, Fujusawa, Japan; Huawei Technologies Co., Ltd., Guangdong, Shenzhen People's Republic of China; CiTR Party Ltd., Milton, Queensland, Australia; Electric Lightwave, Inc., Vancouver, WA; Info Comm Inst Singapore, Singapore, Singapore, Anritus Corporation, Atsugi-shi, Kanagawa, Japan; BellSouth, Atlanta, GA; Cabletron Systems, Durham, NH; Cypress Semiconductor, San Jose, CA; Ellacoya Networks, Inc., Merrimack, NH; EATRI, Taejeon, Republic of Korea; Hitachi Telecom USA, Inc., Norross, GA; Hughes Network Systems, Germantown, MD; IBM, Research Triangel Park, NC; National Communications System, Arlington, VA; Metrodata, Egham, Surrey, Untied Kingdom; LSI Logic Corporation, Milpitas, CA; NCUBE, Foster City CA; Network Associates, Inc., Santa Clara, CA; Samsung Electronics Co., Seoul, Republic of Korea; Sonera Corporation, Tampere, Finland; Sony Corporation, Fujisawa, Japan; Telefonica de Edpana, Madrid, Spain; Visual Networks, Rockville, MD; Vitesse Semiconductor Corp., Camarillo, CA; Xilinx, San Jose, CA; ADC Telecommunications, Portland, OR; Catamaran Communications, San Jose, CA; Coreon Inc., Fremont, CA; Nortel Networks Broadband Access, Newark, CA; NorthPoint Communications, San Francisco, CA; Onex Communications Corp., Bedford, MA; Terayon Communications Systems, Tel-Aviv, ISRAEL; RapidWAN, San Jose, CA; Sedon Networks, Kanata, Ontario, CANADA; Seneca Networks, Inc., Rockville, MD; Tachion Networks, Eatontown, NJ; TeraGlobal Communications Corp., San Diego, CA; and Woodwind Communications System Inc., Germantown, MD have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and The ATM Forum intends to file additional written notification disclosing all changes in membership.

On April 19, 1993, The ATM Forum filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 2, 1993 (58 FR 31415).

The last notification was filed with the Department on March 29, 2001. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 3, 2001 (66 FR 22259).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 01–20090 Filed 8–9–01; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—HDP User Group International, Inc.

Notice is hereby given that, on August 31, 1999, pursuant to Section 6(a) of the National Cooperative Research and

Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), HDP User Group International, Inc. filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Motorola, Inc., Schaumberg, IL and Jabil Circuit, Boise, ID have been added as parties to this venture. Also, Combitech Electronics, Janksping, SWEDEN and STMicroelectronics SA, Carrolton, TX have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and HDP User Group International, Inc. intends to file additional written notification disclosing all changes in membership.

On September 14, 1994, HDP User Group International, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 23, 1995 (60 FR 15306).

The last notification was filed with the Department on April 12, 1999. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on November 12, 1999 (64 FR 61666).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 01–20094 Filed 8–9–01; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—J Consortium, Inc.

Notice is hereby given that, on July 12, 2001, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), J Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Solidware, Beaverton, OR; NOVATEK Inc., Baltimore, MD; ACIONYX, Cupertino, CA; Intrinsyc Software, Chicago, IL; FLYSCAN Technologies, Nepean, Ontario, Canada; Spall Andreas (individual member), Woerth, Germany; Ted R. Booth III (individual member), San Diego, CA; Frank Chuang (individual member), Taipei, Taiwan; Markus Dommann (individual member), Zurich, Switzerland; Michael B. Hamrick (individual member), Provo, UT; James Hunt (individual member), Baden-Wurtember, Germany; Yerang Hur (individual member), Drexel Hill, PA; Marcus Johnson (individual member), San Jose, CA; Garvin LeClaireq (individual member), Erlanger, KY; Mok H.N. (individual member), Singapore, Singapore; Martin Schwartz (individual member), Berlin, Germany; Dave Siracusa (individual member), Newton Square, PA; Insop Song (individual member), Waterloo, Ontario, Canada; Michael J. Sipin (individual member), Bloomington, CA; Ranga Sreenivasan (individual member), Rohnert Park, CA; Manickavel Subramani (individual member), Boyds, MD; and Adusumilli Suresh (individual member), Secunderabad, Andhra Pradesh, India have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and J Consortium, Inc. intends to file additional written notification disclosing all changes in membership.

On August 9, 1999, J Consortium, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 21, 2000 (65 FR 15175).

The last notification was filed with the Department on April 16, 2001. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on July 19, 2001 (66 FR 37708).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 01–20091 Filed 8–9–01; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Steering Committee for Certain University of Houston Sewer-Main Collection System Research Projects

Notice is hereby given that, on June 13, 2001, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the Steering Committee for Certain University of Houston Sewer-Main Collection System Research Projects (''Steering Committee'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are American Concrete Pipe Association, Irving, TX; Fiberglass Tank & Pipe Institute, Houston, TX; National Clay Pipe Institute, Lake Geneva, WI; Uni-Bell PVC Pipe Association, Dallas, TX; Pate Engineers, Inc., Houston, TX; Black & Veatch, Kansas City, MO; Parsons Brinckerhoff, New York, NY; BRH-Garver, Inc., Houston, Tx; City of Montgomery, AL; City of Conroe, TX; City of Victoria, TX, City of Houston, TX; the University of Houston, Houston, TX; and the U.S. Environmental Protection Agency Office of Waste Water Management, Washington, DC. The nature and objectives of the venture are to provide input and oversight with respect to certain sewer-main collection system research projects to be conducted by the University of Houston under grants from the United States Environmental Protection Agency (''EPA''). These projects include: (1) The determination, through controlled laboratory testing, of infiltration leak-rates for large diameter (i.e., 30-inch and greater) sewer-main joints, manhole-to-pipe joints, and manhole joint construction areas; (2) the identification and collection of relevant cost data for typical infiltration-leak prone areas; and (3) the development of a family of life cycle cost models for different infiltration rates of large diameter sewer-main collection system joints (i.e., piping and manholes) and costs incurred as a result of infiltration over the life of the system. The activities of

the Steering Committee will include: (1) Providing overall research project guidance and recommendations to help achieve product goals; (2) reviewing and developing Steering Committee consensus approval of the infiltration test protocols developed by the Civil & Environmental Department of the University of Houston for pipe joints, manhole-to-pipe joints, and manhole joint testing; (3) reviewing draft project task reports, offering comments and developing a Steering Committee consensus approval of final reports released to the EPA and other interested parties; and (4) meeting three to four times per year at the University of Houston testing facility for on-site updates on research project status.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 01–20092 Filed 8–9–01; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances, Notice of Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with section 1301.34 of title 21, Code of Federal Regulations (CFR), notice is hereby given that on February 9, 2001, Chattem Chemicals, Inc., 3801 St. Elmo Avenue, Building 18, Chattanooga, Tennessee 37409, made application by renewal and by letter dated June 11, 2001, to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Amphetamine (1100)	II
Methamphetamine (1105)	II
Phenylacetone (8501)	II
Thebaine (9333)	II
Opium, (raw (9600)	II
Poppy Straw Concentrate (9670)	II

The firm plans to import the listed controlled substances to bulk manufacture controlled substances.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of these basic classes of controlled substances may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than September 10, 2001.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import basic classes of any controlled substances in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: July 31, 2001.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 01–20108 Filed 8–9–01; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to section 1301.33(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on January 9, 2001, Lilly Del Caribe, Inc., Chemical Plant, Kilometer 146.7, State Road 2, Mayaguez, Puerto Rico 00680, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of dextropropoxyphene (9273), a basic class of controlled substance listed in Schedule II.

The firm plans to manufacture bulk product for distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than October 9, 2001.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 01–20109 Filed 8–9–01; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to section 1301.33(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on December 20, 2000, Pressure Chemical Company, 3419 Smallman Street, Pittsburgh, Pennsylvania 15201, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of 2,5-dimethoxyamphetamine (7396), a basic class of controlled substance listed in Schedule I.

The firm plans to manufacture 2,5-dimethoxyamphetamine for distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than October 9, 2001.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 01–20112 Filed 8–9–01; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on January 16, 2001, Roche Diagnostics Corporation, 9115 Hague Road, Indianapolis, Indiana 46250, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
Phencyclidine (7471)	II
Benzoylecgonine (9180)	II
methadone (9250)	II
Morphine (9300)	II

Roche Diagnostics Corporation plans to manufacture small quantities of the above listed controlled substances for incorporation in drug of abuse detection kits.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than October 9, 2001.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 01–20107 Filed 8–9–01; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substance; Notice of Application

Pursuant to section 1301.33(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on January 22, 2001, Sigma Aldrich Research Biochemicals, Inc., Attn: Richard Milius, 1–3 Strathmore Road, Natick, Massachusetts 01760, made application by renewal to the Drug Enforcement Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
Aminorex (1585)	I
Alpha-Ethyltryptamine (7249)	I
Lysergic acid diethlamide (7315)	I
Tetrahydrocannabinols (7370)	I
4-Bromo-2, 5-dimethoxyamphetamine (7391).	I
4-Bromo-2,5-dimethoxphenethylamine (7392).	I
2,5-Dimethoxyamphetamine (7396).	I
3,4-Methylenedioxyamphetamine (7400).	I
N-Hydroxy-3,4-methylenedioxyamphetamine (7402).	I
3,4-Methylenedioxy-N-ethylamphetamine (7404).	I
3,4-Methylenedioxymethamphetamine (7405).	I
1-[1-(2-Thienyl) cyclohexyl] piperidine (7470).	I
Heroin (9200)	I
Normorphine (9313)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Phenylcyclohexylamine (7460)	II
Phencyclidine (7471)	II
Cocaine (9041)	II
Codeine (9050)	II
Diprenorphine (9058)	II
Benzoylecgonine (9180)	II
Levomethorphan (9210)	II
Levorphanol (9220)	II
Meperidine (9230)	II
Metazocine (9240)	II
Methadone (9250)	II
Morphine (9300)	II
Thebaine (9333)	II
Canfentanil (9773)	II
Levo-alphacetylmethadol (LAAM) 9648).	II
Fentanyl (9801)	II

The firm plans to manufacture the listed controlled substances for laboratory reference standards and neurochemicals.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than October 9, 2001.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 01–20110 Filed 8–9–01; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with section 1301.34 of title 21, Code of Federal Regulations (CFR), notice is hereby given that on January 25, 2001, Sigma Chemical Company, Subsidiary of Sigma-Aldrich Company, 3500 Dekalb Street, St. Louis, Missouri 63118, made application by renewal to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
Aminorex (1585)	I
Gamma hydroxybutyric acid (2010).	I
Methaqualone (2565)	I
Ibogaine (7260)	I
Lysergic acid diethylamide (7315)	I
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
4-Bromo-2,5-dimethoxyamphetamine (7391).	I
4-Bromo-2,5-dimethoxyphenethylamine (7392).	I
2,5-Dimethoxyamphetamine (7396).	I
3,4-Methylenedioxyamphetamine (7400).	I
N-Hydroxy-3,4-methylenedioxyamphetamine (7402).	I
3,4-Methylenedioxy-N-ethylamphetamine (7404).	I

Drug	Schedule
3,4-Methylenedioxymethamphetamine (7405).	I
4-Methoxyamphetamine (7411)	I
Bufotenine (7433)	I
Psilocyn (7438)	I
Heroin (9200)	I
Normorphine (9313)	I
Etonitazene (9624)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Methylphenidate (1724)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Glutethimide (2550)	II
Phencyclidine (7471)	II
Cocaine (9041)	II
Codeine (9050)	II
Diprenorphine (9058)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Benzoylecgonine (9180)	II
Ethylmorphine (9190)	II
Hydrocodone (9193)	II
Levorphanol (9220)	II
Meperidine (9230)	II
Methadone (9250)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Morphine (9300)	II
Thebaine (9333)	II
Opium powdered (9639)	II
Oxymorphone (9652)	II
Fentanyl (9801)	II

The firm plans to repackage and offer as pure standards controlled substances in small milligram quantities for drug testing and analysis.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of these basic classes of controlled substances may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than September 10, 2001.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42(a), (b), (c), (d), (e), and (f) are satisfied.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 01–20111 Filed 8–9–01; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

July 27, 2001.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King at (202) 693–4129 or E-Mail King-Darrin@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ETA, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), on or before September 10, 2001.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Type of Review: Extension of a currently approved collection.

Agency: Employment and Training Administration (ETA).

Title: Procedures for Classifying Labor Surplus Areas.

OMB Number: 1205–0207.

Affected Public: State, Local, or Tribal Government and Federal Government.

Frequency: On occasion.

Number of Respondents: 1.

Number of Annual Responses: 1.

Estimated Time Per Response: 3 hours.

Total Burden Hours: 3.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: Under Executive Orders 12073 and 10582, the Secretary of Labor is required to classify labor surplus areas (LSAs) for the use of Federal agencies in directing procurement activities and in locating new plants or facilities in areas of high unemployment. The LSA list is updated annually based upon petitions submitted to the Department of Labor by States requesting additional areas for LSA classification in accordance with 20 CFR 654.5.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 01–20076 Filed 8–9–01; 8:45 am]

BILLING CODE 4510–23–M

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary

of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of decisions listed to the Government Printing Office document entitled ''General Wage determinations Issued Under the Davis-Bacon and related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Massachusetts:
MA010005 (Mar. 2, 2001)
MA010009 (Mar. 2, 2001)
MA010012 (Mar. 2, 2001)
MA010013 (Mar. 2, 2001)
MA010015 (Mar. 2, 2001)
MA010016 (Mar. 2, 2001)
MA010017 (Mar. 2, 2001)
MA010019 (Mar. 2, 2001)
MA010020 (Mar. 2, 2001)
MA010021 (Mar. 2, 2001)

Volume II

District of Columbia:
DC010001 (Mar. 2, 2001)
DC010003 (Mar. 2, 2001)
Delaware:
DE010001 (Mar. 2, 2001)
DE010002 (Mar. 2, 2001)
DE010004 (Mar. 2, 2001)
DE010005 (Mar. 2, 2001)
DE010008 (Mar. 2, 2001)
DE010009 (Mar. 2, 2001)
Maryland:
MD010001 (Mar. 2, 2001)
MD010034 (Mar. 2, 2001)
MD010036 (Mar. 2, 2001)
MD010046 (Mar. 2, 2001)
MD010048 (Mar. 2, 2001)
MD010056 (Mar. 2, 2001)
MD010057 (Mar. 2, 2001)
MD010058 (Mar. 2, 2001)
Pennsylvania:
PA010011 (Mar. 2, 2001)
PA010016 (Mar. 2, 2001)
PA010020 (Mar. 2, 2001)
PA010027 (Mar. 2, 2001)
PA010028 (Mar. 2, 2001)
PA010032 (Mar. 2, 2001)
PA010053 (Mar. 2, 2001)
PA010065 (Mar. 2, 2001)
Virginia:
VA010025 (Mar. 2, 2001)
VA010048 (Mar. 2, 2001)
VA010052 (Mar. 2, 2001)
VA010058 (Mar. 2, 2001)
VA010078 (Mar. 2, 2001)
VA010079 (Mar. 2, 2001)
VA010092 (Mar. 2, 2001)
VA010099 (Mar. 2, 2001)

Volume III

Kentucky:
KY010001 (Mar. 2, 2001)
KY010002 (Mar. 2, 2001)
KY010003 (Mar. 2, 2001)
KY010004 (Mar. 2, 2001)
KY010007 (Mar. 2, 2001)
KY010025 (Mar. 2, 2001)
KY010027 (Mar. 2, 2001)
KY010028 (Mar. 2, 2001)
KY010029 (Mar. 2, 2001)
KY010044 (Mar. 2, 2001)

Volume IV

Illinois:
IL010008 (Mar. 2, 2001)
IL010009 (Mar. 2, 2001)
IL010011 (Mar. 2, 2001)
Minnesota:
MN010019 (Mar. 2, 2001)
Ohio:
OH010001 (Mar. 2, 2001)
OH010002 (Mar. 2, 2001)
OH010003 (Mar. 2, 2001)
OH010006 (Mar. 2, 2001)
OH010008 (Mar. 2, 2001)
OH010009 (Mar. 2, 2001)
OH010012 (Mar. 2, 2001)
OH010013 (Mar. 2, 2001)
OH010014 (Mar. 2, 2001)
OH010018 (Mar. 2, 2001)
OH010020 (Mar. 2, 2001)
OH010022 (Mar. 2, 2001)
OH010023 (Mar. 2, 2001)
OH010024 (Mar. 2, 2001)
OH010026 (Mar. 2, 2001)
OH010027 (Mar. 2, 2001)
OH010028 (Mar. 2, 2001)
OH010029 (Mar. 2, 2001)

Volume V

Iowa:
IA010003 (Mar. 2, 2001)
IA010006 (Mar. 2, 2001)
IA010045 (Mar. 2, 2001)
Kansas:
KS010006 (Mar. 2, 2001)
KS010007 (Mar. 2, 2001)
KS010009 (Mar. 2, 2001)
KS010010 (Mar. 2, 2001)
KS010011 (Mar. 2, 2001)
KS010012 (Mar. 2, 2001)
KS010013 (Mar. 2, 2001)
KS010017 (Mar. 2, 2001)
KS010022 (Mar. 2, 2001)
KS010025 (Mar. 2, 2001)
KS010026 (Mar. 2, 2001)
KS010029 (Mar. 2, 2001)
KS010035 (Mar. 2, 2001)
KS010061 (Mar. 2, 2001)
KS010069 (Mar. 2, 2001)
KS010070 (Mar. 2, 2001)

Volume VI

Colorado:
CO010001 (Mar. 2, 2001)
CO010002 (Mar. 2, 2001)
CO010003 (Mar. 2, 2001)
CO010004 (Mar. 2, 2001)
CO010005 (Mar. 2, 2001)
CO010006 (Mar. 2, 2001)
CO010007 (Mar. 2, 2001)
CO010008 (Mar. 2, 2001)
CO010009 (Mar. 2, 2001)
CO010010 (Mar. 2, 2001)
CO010011 (Mar. 2, 2001)
CO010014 (Mar. 2, 2001)
CO010016 (Mar. 2, 2001)
CO010018 (Mar. 2, 2001)
CO010020 (Mar. 2, 2001)
CO010021 (Mar. 2, 2001)
CO010022 (Mar. 2, 2001)

CO010023 (Mar. 2, 2001)
CO010024 (Mar. 2, 2001)
CO010025 (Mar. 2, 2001)

Volume VII

California:
CA010002 (Mar. 2, 2001)
CA010004 (Mar. 2, 2001)
CA010009 (Mar. 2, 2001)
CA010028 (Mar. 2, 2001)
CA010029 (Mar. 2, 2001)
CA010030 (Mar. 2, 2001)
CA010031 (Mar. 2, 2001)
CA010032 (Mar. 2, 2001)
CA010033 (Mar. 2, 2001)
CA010034 (Mar. 2, 2001)
CA010035 (Mar. 2, 2001)
CA010036 (Mar. 2, 2001)
CA010037 (Mar. 2, 2001)
CA010038 (Mar. 2, 2001)
CA010039 (Mar. 2, 2001)
CA010040 (Mar. 2, 2001)
CA010041 (Mar. 2, 2001)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *www.access.gpo.gov/davisbacon*. They are also available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 2042, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 2nd day of August 2001.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 01–19867 Filed 8–9–01; 8:45 am]

BILLING CODE 4510–27–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on September 4, 2001, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Tuesday, September 4, 2001—3:00 p.m. Until the Conclusion of Business

The Subcommittee will discuss proposed ACRS activities and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff person named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting the cognizant ACRS staff person, Howard J. Larson (telephone: 301/415–6805) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: August 6, 2001.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 01–20077 Filed 8–9–01; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISISON

[Release No. 34–44643; File No. MSRB–2001–03]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board (MSRB); Order Granting Approval to Proposed Rule Change Relating to the Establishment of an Optional Procedure for Electronic Submissions of Required Materials Under Rule G–36, on Delivery of Official Statement, Advance Refunding Documents and Forms 36(OS) and G–36(ARD) to the MSRB

August 1, 2001.

On June 7, 2001, the Municipal Securities Rulemaking Board (''MSRB'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish an optional procedure for electronic submissions of required materials under G–36, on delivery of official statements, advance refunding documents and Forms G–36 (OS) and G–36 (ARD) to the MSRB.

The proposed rule change was published for comment in the **Federal Register** on June 28, 2001.[3] The Commission received no comments on the proposal. This order approves the proposal.

The proposed rule change consists of (i) an amendment to the MSRB facility currently known as the Official Statement and Advance Refunding Document—Paper Submission system (the ''OS/ARD Facility'') of the MUNICIPAL SECURITIES INFORMATION LIBRARY® system

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Release No. 34–44458 (June 20, 2001), 66 FR 34495.

(''MSIL®'')[4] and (ii) an amendment to Rule G–36. In its current form, Rule G–36 requires that a broker, dealer or municipal securities dealer that acts as managing or sole underwriter for most primary offerings send the official statement and Form G–36(OS) to the MSIL® system within certain time frames set forth in the rule.[5] In the case of an advance refunding, the managing or sole underwriter must send both the prepared advance refunding documentation and Form G–36(ARD) to the MSIL® system.[6]

In November 1998, the MSRB published an interpretive release describing requisite standards for dealers to satisfy document delivery obligations by means of electronic communications.[7] Since publication of the notice, the MSRB has encouraged modernization of disclosure practices in the primary and secondary municipal securities market. This proposed rule change implements an optional system of electronic submission by underwriters of official statements, advance refunding documents and Form G–36 (ARD) to the MSIL® system. Additionally, the proposed change amends rule G–36 in order to effectuate this electronic system. The new system will allow underwriters to chose between documents submissions in either electronic or paper form.

The Commission must approve a proposed MSRB rule change if the Commission finds the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that govern the MSRB.[8] The Commission finds that the proposed rule change meets this standard. In particular, the Commission finds that the proposed rule is consistent with the requirements of Section 15B(b)(2)(C) of the Act,[9] which requires, in pertinent part, that the MSRB's rules be 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, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national system, and, in general, to protect investors and the public interest.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act[10], that the proposed rule change (File No. MSRB–2001–03) be, and it hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–20083 Filed 8–9–01; 8:45 am]

BILLING CODE 8010–01–M

[4] Municipal Securities Information Library and MSIL are registered trademarks of the MSRB.

[5] For primary offerings subject to Exchange Act Rule 15c2–12, the final official statement and Form G–36(OS) must be sent to the MSIL® system within one business day after receipt of the official statement from the issuer, but no later than ten business days after the sale date of the offering. For most primary offerings exempt from Rule 15c2–12 for which an official statement in final form is being prepared, such official statement and Form G–36(OS) must be sent tot he MSIL® system by the later of one business day after the closing of the underwriting or one business day after receipt of the official statement from the issuer. Rule G–36(c)(iii) provides exemptions from the rule requirements for certain limited types of offerings.

[6] The advance refunding document and Form G–36(ARD) must be sent to the MSIL® system within five business days after the closing of the underwriting.

[7] *See* Rule G–32 Interpretation—Notice Regarding Electronic Delivery and Receipt of Information by Brokers, Dealers and Municipal Securities Dealers, November 20, 1998, *MSRB Rule Book*, (January 1, 2001) at 161.

[8] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78o–4(b)(2)(C).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44642; File No. MSRB–2001–04]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board (MSRB); Order Granting Approval of Proposed Rule Change Relating to In-firm Delivery of the Regulatory Element of the Continuing Education Requirement

August 1, 2001.

On June 14, 2001, the Municipal Securities Rulemaking Board (''MSRB'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 10(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amended rules G–3, on professional qualifications, rule G–8, on books and records, G–9, on record retention, and G–27, on supervision. The proposed rule change will allow dealers to provide in-firm delivery of the Regulatory Element of the continuing education requirement.

The proposed rule change was published for comment in the **Federal Register** on June 28, 2001.[3] The Commission received no comments on the proposal. This order approves the proposal.

In its current form, Rule G–3(h)(i)(A)(1) requires that each registered person who is not exempt from the rule, completer the Regulatory Element on the occurrence of his or her second registration anniversary and every three years thereafter. The Regulatory Element is a three and one half hour computer-based training program previously only administered at the location of an outside vendor. On each occasion, the training must be completed within 120 days after the registered person's anniversary date. A registered person who has not completed the Regulatory Element within the prescribed time periods is deemed to be inactive until the Regulatory Element has been fulfilled, and may not conduct, or be compensated for, activities requiring a securities registration.

The MSRB proposed rule change integrates the in-firm delivery requirements as specified by the Securities Industry/Regulatory Council on Continuing Education (''Council''), an overseer of the continuing education program for the securities industry. The Council recommends and assists in developing specific content and questions for the Regulatory Element, and minimum core curricula for the Firm Element. The Council, working with representatives from the North American Securities Administrators Association, and with the knowledge of the Council's Securities and Exchange Commission liaisons, developed a model under which brokers, dealers and municipal securities dealers may deliver the Regulatory Element computer-based training on firm premises. The model requires that the broker, dealer or municipal securities dealer meet certain conditions for in-firm delivery relating to supervision, computer hardware and security of the training delivery environment.

The Commission believes the proposed rule change is consistent with the protection of investors and the public interest on account that it facilitates the ability of registered persons to satisfy their obligations to meet the Regulatory Element of the continuing education requirement. Additionally, the Commission believes that the proposed rule change will not impose any burden on competition, since it equally applies to all brokers,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Release No. 34–44464 (June 22, 2001), 66 FR 34499.

dealers and municipal securities dealers.

The Commission must approve a proposed MSRB rule change if the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that govern the MSRB.[4] The Commission finds that the proposed rule change meets this standard. In particular, the Commission finds that the proposed rule is consistent with the requirements of Section 15B(b)(2)(C) of the Act, [5] which requires, that the MSRB's rules be 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, settling, process information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national system, and, in general, to protect investors and the public interest.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act [6], that the proposed rule change (File No. MSRB–2001–04) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority [7].

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–20084 Filed 8–8–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44648; File No. SR–NSCC–2001–11]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Regarding IntraDay Contract Reports

August 2, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on June 14, 2001, the National Securities Clearing Corporation (''NSCC'') 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 NSCC. 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 modifies NSCC's Procedures to provide that contract lists may be made available to members on an intraday basis. The proposed rule change also amends NSCC's Rules to provide that the earlier production of trade reports will not change the timing of NSCC's trade guaranty.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC 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. NSCC 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

Delivering trade data output to NSCC's participants throughout the day has been identified as one of many components necessary to meet the challenge of shortening the clearance and settlement process as the securities industry moves towards settlement on a T+1 basis. Accordingly and in preparation for the move towards shortened settlement cycles, NSCC is modifying its Procedures[3] to provide that contract lists may be issued to participants on a multibatch intraday basis to report trade activity that has been submitted by or on behalf of participants through such intraday processing time. NSCC states that such reporting will provide its participants with trade information on an earlier and more frequent basis as well as increase NSCC's processing capacity.

The provisions of intraday reports is not at this time intended to impact or change the timing of NSCC's trade guaranty obligations, which under the current rules become effective at midnight of the day on which trades are reported to participants as compared or recorded. NSCC generally reports trades on T+1. The timing of the guaranty was based on the fact that NSCC has historically provided its participants with end of day contract reporting early in the morning of T+1. NSCC wants to make contract sheets available intraday throughout the day on trade date but does not want at this time to be required to provide an earlier trade guaranty. NSCC is currently analyzing what risk procedures it needs to cover an early guaranty.

To ensure that the earlier trade reporting does not impact the trade guaranty, NSCC is modifying Addenda K and M. As both addenda currently set forth NSCC's trade guaranty policies, these provisions are being consolidated in Addendum K, and Addendum M will be deleted. The revised Addendum K will now provide that NSCC will guaranty the completion of CNS and balance order trades as of the later of: (i) Midnight of T + 1 or (ii) midnight of the day the trades are reported to participants as compared or recorded on contracts. In addition, certain changes are being made to Addendum K to delete provisions relating to services (relating to New York Windows and the International Securities Clearing Corporation) NSCC no longer provides.

NSCC states that this rule change permits trade information to be made available to NSCC's participants on an earlier and more frequent basis and therefore will facilitate the prompt and accurate clearance and settlement of securities transactions without jeopardizing the safety and soundness of the clearing process. NSCC believes that the proposed rule change is therefore consistent with the requirements with Section 17A(b)(3)(F) of the Act and the rules and regulations thereunder.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have an impact on or impose a 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 relating to the proposed rule change have been solicited or received. NSCC will notify the Commission of any written comments it receives.

[4] In approving this proposed rule change, the Commissioin notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78o–4(b)(2)(C).

[6] 15 U.S.C. 78s(b)(2).

[7] 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] NSCC's Procedure II, Trade Comparison Service.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change constitutes an interpretation with respect to the meaning, administration, or enforcement of an existing rule of NSCC, it has become effective pursuant to Section 19(b)(3)(A)(i) of the Act [4] and Rule 19b–4(f).[5] At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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 proposal 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 the NSCC. All submissions should refer to the File No. SR–NSCC–2001–11 and should be submitted by August 31, 2001.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–20082 Filed 8–9–01; 8:45 am]

BILLING CODE 8010–01–M

[4] 15 U.S.C. 78s(b)(3)(A)(i).

[5] 17 CFR 240.19b–4(f).

[6] 17 CFR 200.30–3(a)(12).

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301–121]

Determination of Action To Suspend GSP Benefits Under Section 301(b); Further Proposed Action and Publication of Preliminary Product List; and Request for Public Comment: Intellectual Property Laws and Practices of the Government of Ukraine

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of determinations and action; notice of proposed action; request for written comments; invitation to participate in public hearing.

SUMMARY: The United States Trade Representative (Trade Representative), pursuant to sections 304(a)(1)(A) and 301(b) of the Trade Act of 1974, as amended (the Trade Act), has determined that certain acts, policies, and practices of Ukraine with respect to the protection of intellectual property rights are unreasonable and burden or restrict United States commerce and are thus actionable under section 301(b). Pursuant to sections 304(a)(1)(B), 301(b) and 301(c) of the Trade Act, the Trade Representative has determined that appropriate action to obtain the elimination of such acts, policies, and practices includes the suspension of duty-free treatment accorded to all products of Ukraine under the Generalized System of Preferences (GSP) program. Moreover, because further action may include the imposition of prohibitive duties on certain products of Ukraine, in this notice USTR is also publishing a preliminary list of Ukrainian products under consideration for the imposition of prohibitive duties. USTR invites interested persons to submit written comments and to participate in a public hearing concerning the possible imposition of prohibitive duties on the products on the enclosed preliminary list.

EFFECTIVE DATES: The Trade Representative's determinations as to actionability under section 301(b) and the suspension of GSP benefits were made on August 2, 2001. The suspension of Ukraine's GSP benefits will be effective with respect to goods entered, or withdrawn from warehouse, for consumption on or after August 24, 2001. With respect to the preliminary list of Ukrainian products under consideration for the imposition of prohibitive duties: requests to appear at the public hearing are due by August 24, 2001; written testimony is due by August 31, 2001; a public hearing is scheduled for September 11, 2001; and written comments and rebuttal comments are due by September 17, 2001.

ADDRESSES: Requests, comments, and testimony should be submitted to Sybia Harrison, Staff Assistant to the Section 301 Committee, ATTN: Docket 301–121, Office of the United States Trade Representative, 1724 F Street, NW., Room 217, Washington, DC 20508. The public hearing is scheduled to be held in at the Office of the United States Trade Representative, 1724 F Street, NW., Rooms 1 and 2, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Kira Alvarez, Office of Services, Investment and Intellectual Property, Office of the United States Trade Representative (202) 296–6864; David Birdsey, Office of European Affairs, Office of the United States Trade Representative, (202) 395–9549; William Busis, Office of the General Counsel, Office of the United States Trade Representative, (202) 395–3150; Sybia Harrison, Staff Assistant to the Section 301 Committee, (202) 395–3419, for information regarding participation in the public hearing or the submission of written comments; John Valentine, International Agreements Staff, U.S. Customs Service, (202) 927–1219, for questions concerning product classification.

SUPPLEMENTARY INFORMATION: In a notice published on April 6, 2001 (66 FR 18346), USTR announced the initiation of a section 302 investigation regarding the Government of Ukraine's intellectual property protection laws and practices, including the Government of Ukraine's failure to use existing law enforcement authority to stop the ongoing unauthorized production of optical media products and to enact an optical media licensing regime that would preclude the piracy of such products. *See* 66 FR 18346 (April 6, 2001). The April 6, 2001 notice proposed to determine that these acts, policies and practices are actionable under section 301(b) and that appropriate action may include the suspension of duty-free treatment accorded under the GSP program to some or all products of Ukraine. The notice also stated that, as a further step, the Trade Representative might decide to impose increased duties or other import restrictions on Ukrainian goods. Finally, the April 6, 2001 notice stated that prior to imposing increased duties or import restrictions on Ukrainian goods, USTR would publish a notice requesting comments on a specific list of Ukrainian products.

The Section 301 Committee conducted a public hearing on April 27, 2001, and received and reviewed written comments on the issues in the investigation. As of this time, the Government of Ukraine has not stopped the unauthorized production of optical media products and has not enacted a licensing regime to prevent optical media piracy.

Determinations

Matters actionable under section 301(b) include acts, policies, or practices of a foreign government that are ''unreasonable'' and burden or restrict U.S. commerce. Under section 301(d)(3)(B)(i)(II), ''unreasonable'' practices include any act, policy or practice which denies fair and equitable provision of adequate and effective protection of intellectual property rights.

The United States has consulted repeatedly with the Government of Ukraine regarding the matters under investigation. The Government of Ukraine has made very little progress in addressing two key issues: (1) the use of existing law enforcement tools to stop the current piracy, and (2) the introduction of an optical media licensing regime (which has become the international norm) to prevent a subsequent resurgence of pirate activity. Accordingly, on the basis of the investigation initiated under section 302 of the Trade Act, the comments received, and the consultations, the Trade Representative has determined pursuant to sections 301(b) and 304(a)(1)(A) of the Trade Act that the acts, policies and practices of Ukraine with respect to the protection of intellectual policy rights are unreasonable and burden or restrict U.S. commerce, and are thus actionable under section 301(b).

Because the determination of the Trade Representative under section 304(a)(1)(A) of the Trade Act is affirmative, the Trade Representative must determine the appropriate and feasible action to take under section 301(b) and (c). In a case in which the act, policy, or practice under investigation also fails to meet the eligibility criteria for receiving duty-free treatment under the GSP program, section 301(c)(1)(C) of the Trade Act provides that the Trade Representative may withdraw, limit or suspend such duty-free treatment. One of the GSP program's eligibility criteria is the extent to which a foreign country provides adequate and effective protection of intellectual property rights.

Pursuant to sections 304(a)(1)(B), 301(b), and 301(c)(1)(C) of the Trade Act, the Trade Representative has determined that appropriate and feasible action includes the suspension of duty-free treatment accorded to the products of Ukraine under the GSP program. Accordingly, the Harmonized Tariff Schedule of the United States (HTS) is modified as follows: (1) General note 4(a) is modified by deleting ''Ukraine'' from the list of independent countries; (2) general note 4(d) is modified by deleting ''2306.30.00 Ukraine'' and by deleting ''Ukraine'' set out opposite subheading 2804.29.00; and (3) the Rates of Duty 1-Special subcolumn for HTS subheading 2306.30.00 is modified by deleting the ''A*'' and inserting an ''A''. The foregoing modifications to the HTS are effective with respect to articles entered, or withdrawn from warehouse, for consumption on or after August 24, 2001.

Also, in this notice USTR is proposing that further action under section 301—in addition to the suspension of GSP benefits—if appropriate should include the imposition of prohibitive duties on a final list of Ukrainian products. The final list of products would be drawn from the attached preliminary list.

Written Comments and Public Hearing

The Section 301 Committee invites interested persons to submit written comments and to participate in a public hearing on the possible imposition of prohibitive duties on the products of Ukraine identified in the preliminary product list in the Annex to this notice. The comments sought by the Section 301 Committee with respect to particular products include (i) whether imposing prohibitive duties on a particular product would be practicable or effective in terms of obtaining an elimination of the acts, policies, and practices of the Government of Ukraine that are the subject of the investigation; and (ii) whether imposing prohibitive duties on a particular product would cause disproportionate economic harm to U.S. interests, including small- or medium-size businesses.

In the annexed products list, the items with respect to which comments are requested are products of Ukraine classified in the indicated subheadings of the HTS. The product descriptions in the annex are for information purposes only; the descriptions are not intended to delimit in any way the scope of products that are under consideration for the imposition of increased duties. Instead, the scope of the proposed action under section 301 is governed by the HTS nomenclature for the subheadings listed in the annex. Issues regarding the classification of particular products would be decided by the U.S. Customs Service under its usual rules and procedures for product classification.

Written comments are due by September 17, 2001. A public hearing addressed to these same issues is scheduled for September 11, 2001, in Rooms 1 and 2, First Floor, Office of the United States Trade Representative, 1724 F Street, NW., Washington, DC. Interested persons wishing to testify orally at the hearing must provide a written request by August 24, 2001 to Sybia Harrison, Staff Assistant to the Section 301 Committee, ATTN: Docket 301–121, Office of the United States Trade Representative, 1724 F Street, NW., Room 217, Washington, DC 20508. Requests to testify must include the following information: (1) Name, address, telephone number, fax number, and firm or affiliation of the person wishing to testify; and (2) a brief summary of the comments to be presented. After the Chairman of the Section 301 Committee considers the request to present oral testimony, Ms. Harrison will notify the applicant of the time of his or her testimony. In addition, persons presenting oral testimony must submit their complete written testimony by August 31, 2001. In order to allow each interested party an opportunity to contest the information provided by other parties at the hearing, USTR will accept written rebuttal comments, which must be filed by September 17, 2001. Rebuttal comments should be limited to demonstrating errors of fact or analysis not pointed out in the hearing and should be as concise as possible. All written comments must state clearly the position taken, describe with particularity the supporting rationale, be in English, and be provided in twenty copies to: Sybia Harrison, Staff Assistant to the Section 301 Committee, ATTN: Docket 301–121, Office of the United States Trade Representative, 1724 F Street, NW., Room 217, Washington, DC 20508. In addition, all written comments should list on the first page the particular HTS subheadings which are addressed in the comments.

Comments will be placed in a file (Docket 301–121) open to public inspection pursuant to 15 CFR 2006.13, except confidential business information exempt from public inspection in accordance with 15 CFR 2006.15. Confidential business information submitted in accordance with 15 CFR 2006.15 must be clearly marked ''BUSINESS CONFIDENTIAL'' in a contrasting color ink at the top of each page on each of the 20 copies, and

must be accompanied by a non-confidential summary of the confidential information. The non-confidential summary shall be placed in the file that is open to public inspection. An appointment to review the docket may be made by calling Brenda Webb at (202) 395–6186. The USTR Reading Room is open to the public from 10 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday, and is located in Room 3, First Floor, Office of the United States Trade Representative, 1724 F Street, NW., Washington, DC 20508.

William Busis,

Chairman, Section 301 Committee.

Annex

Preliminary Product List in Investigation 301–121

The proposed action under Section 301 includes the imposition of prohibitive duties on products of Ukraine that are classified in the subheadings of the Harmonized Tariff Schedule of the United States (HTS) listed below. The product descriptions in this annex are for information purposes only; the descriptions are not intended to delimit in any way the scope of products that are under consideration for the imposition of increased duties. Instead, the scope of the proposed action under Section 301 is governed by the HTS nomenclature for the subheadings listed in this annex. Issues regarding the classification of particular products would be decided by the U.S. Customs Service under its usual rules and procedures for product classification.

HTS subheadings	Product description
2530.90.00	Other mineral substances, not elsewhere specified or included.
2614.00.60	Titanium ores and concentrates, other than synthetic rutile.
2710.00.05	Distillate and residual fuel oils (including blends) obtained from bituminous minerals, testing under 25 degrees A.P.I.
2710.00.10	Distillate and residual fuel oils (including blends) obtained from bituminous minerals, testing 25 degrees A.P.I. or more.
2804.29.00	Rare gases, other than argon.
2814.10.00	Anhydrous ammonia.
2814.20.00	Ammonia in aqueous solution.
2823.00.00	Titanium oxides.
2825.60.00	Germanium oxides and zirconium dioxide.
2849.20.10	Silicon carbide, crude.
2849.20.20	Silicon carbide, in grains, or ground, pulverized or refined.
3102.80.00	Mixtures of urea and ammonium nitrate in aqueous or ammoniacal solution.
3105.51.00	Other mineral or chemical fertilizers, containing nitrates and phosphates.
3206.11.00	Pigments and preparations based on titanium dioxide containing 80% or more by weight of titanium dioxide calculated on the dry weight.
3206.19.00	Pigments and preparations based on titanium dioxide containing less than 80% by weight of titanium dioxide calculated on the dry weight.
4804.51.00	Other uncoated, unbleached kraft paper and paperboard, in rolls or sheets, weighing 225 gram/square meter or more.
6201.93.30	Other men's or boys' anoraks, windbreakers and similar articles, not knitted or crocheted, of manmade fibers, water resistant.
6201.93.35	Other men's or boys' anoraks, windbreakers and similar articles, not knitted or crocheted, of manmade fibers, not water resistant.
6202.93.45	Other women's or girls' anoraks, windbreakers and similar articles, not knitted or crocheted, of manmade fibers, water resistant.
6202.93.50	Other women's or girls' anoraks, windbreakers and similar articles, not knitted or crocheted, of manmade fibers, not water resistant.
6203.31.50	Men's or boys' suit-type jackets and blazers, not knitted or crocheted, of worsted wool fabric, made with wool yarn of 18.5 micron or less average fiber diameter.
6203.31.90	Men's or boys' suit-type jackets and blazers, not knitted or crocheted, of wool or fine animal hair, not elsewhere specified or included.
6203.33.10	Men's or boys' suit-type jackets and blazers, not knitted or crocheted, of synthetic fibers, containing 36% or more by weight of wool or fine animal hair.
6203.33.20	Men's or boys' suit-type jackets and blazers, not knitted or crocheted, of synthetic fibers, containing less than 36% by weight of wool or fine animal hair.
6203.39.50	Men's or boys' suit-type jackets and blazers, not knitted or crocheted, containing 70% or more by weight of silk.
6203.39.90	Men's or boys' suit-type jackets and blazers, not knitted or crocheted, of textile materials (other than wool, cotton or manmade fibers), containing less than 70% by weight of silk.
6203.41.12	Other men's or boys' trousers, not knitted or crocheted, of worsted wool fabric, made with wool yarn of 18.5 micron or less average fiber diameter.
6203.41.18	Other men's or boys' trousers, breeches and shorts, not knitted or crocheted, of wool or fine animal hair, not elsewhere specified or included.
6203.43.30	Men's or boys' trousers, breeches and shorts, not knitted or crocheted, of synthetic fibers, containing 36% or more by weight of wool or fine animal hair.
6203.43.35	Men's or boys' trousers and breeches, not knitted or crocheted, of synthetic fibers, containing less than 36% by weight of wool or fine animal hair, water resistant.
6203.43.40	Men's or boys' trousers, breeches and shorts, not knitted or crocheted, of synthetic fibers, containing less than 36% by weight of wool or fine animal hair, not water resistant.
6204.13.10	Women's or girls' suits, not knitted or crocheted, of synthetic fibers, containing 36% or more by weight of wool or fine animal hair.
6204.13.20	Women's or girls' suits, not knitted or crocheted, of synthetic fibers, containing less than 36% by weight of wool or fine animal hair.
6204.33.40	Women's or girls' suit-type jackets and blazers, not knitted or crocheted, of synthetic fibers, containing 36% or more by weight of wool or fine animal hair.
6204.33.50	Women's or girls' suit-type jackets and blazers, not knitted or crocheted, of synthetic fibers, containing less than 36% by weight of wool or fine animal hair.

HTS subheadings	Product description
6204.39.20	Women's or girls' suit-type jackets and blazers, not knitted or crocheted, of artificial fibers, containing 36% or more by weight of wool or fine animal hair.
6204.39.30	Women's or girls' suit-type jackets and blazers, not knitted or crocheted, of artificial fibers, containing less than 36% by weight of wool or fine animal hair.
6204.43.30	Women's or girls' dresses, not knitted or crocheted, of synthetic fibers, containing 36% or more by weight of wool or fine animal hair.
6204.43.40	Women's or girls' dresses, not knitted or crocheted, of synthetic fibers, not elsewhere specified or included.
6204.53.20	Women's or girls' skirts and divided skirts, not knitted or crocheted, of synthetic fibers, containing 36% or more by weight of wool or fine animal hair.
6204.53.30	Women's or girls' skirts and divided skirts, not knitted or crocheted, of synthetic fibers, containing less than 36% by weight of wool or fine animal hair.
6204.62.40	Women's or girls' trousers, breeches and shorts, not knitted or crocheted, of cotton, other than certified hand-loomed or folklore.
6204.63.25	Women's or girls' trousers, breeches and shorts, not knitted or crocheted, of synthetic fibers, containing 36% or more by weight of wool or fine animal hair.
6204.63.30	Women's or girls' trousers or breeches, not knitted or crocheted, of synthetic fibers, containing less than 36% by weight of wool or fine animal hair, water resistant.
6204.63.35	Women's or girls' trousers, breeches and shorts, not knitted or crocheted, of synthetic fibers, containing less than 36% by weight of wool or fine animal hair, not water resistant.
6204.69.20	Women's or girls' trousers, breeches and shorts, not knitted or crocheted, of artificial fibers, containing 36% or more by weight of wool or fine animal hair.
6204.69.25	Women's or girls' trousers, breeches and shorts, not knitted or crocheted, of artificial fibers, containing less than 36% by weight of wool or fine animal hair.
6205.20.20	Men's or boys' shirts, not knitted or crocheted, of cotton, other than certified hand-loomed and folklore.
6205.30.15	Other men's or boys' shirts, not knitted or crocheted, of manmade fibers, containing 36 percent or more by weight of wool or fine animal hair.
6205.30.20	Other men's or boys' shirts, not knitted or crocheted, of manmade fibers, containing less than 36% by weight of wool or fine animal hair.
6206.40.25	Women's or girls' blouses, shirts and shirt-blouses, not knitted or crocheted, of manmade fibers, containing 36% or more by weight of wool or fine animal hair.
6206.40.30	Women's or girls' blouses and shirts, not knitted or crocheted, of manmade fibers, not elsewhere specified or included.
6211.43.00	Women's or girls' track suits or other garments not elsewhere specified or included, not knitted or crocheted, of manmade fibers
6403.99.60	Footwear with outer soles of rubber, plastics or composition leather and uppers of leather, not covering the ankle, not welt, for men, youths and boys, not elsewhere specified or included.
6403.99.75	Footwear with outer soles of rubber, plastics or composition leather and uppers of leather, not covering the ankle, not welt, for persons (other than men, youths or boys), valued not over $2.50/pair.
6403.99.90	Footwear with outer soles of rubber, plastics or composition leather and uppers of leather, not covering the ankle, not welt, for persons (other than men, youths or boys), valued over $2.50/pair.
6404.19.35	Footwear with outer soles of rubber or plastics and uppers of textile, with open toes or open heels or slip-on type, 10% or more by weight of rubber or plastics.
7102.10.00	Diamonds, unsorted.
7102.31.00	Nonindustrial diamonds, unworked or simply sawn, cleaved or bruted.
7102.39.00	Nonindustrial diamonds, worked, but not mounted or set.
7115.10.00	Platinum catalysts in the form of wire cloth or grill.
7202.11.10	Ferromanganese containing by weight more than 2% but not more than 4% of carbon.
7202.11.50	Ferromanganese containing by weight more than 4% of carbon.
7202.21.10	Ferrosilicon containing by weight more than 55% but not more than 80% of silicon and containing by weight more than 3% of calcium.
7202.21.50	Ferrosilicon containing by weight more than 55% but not more than 80% of silicon, not elsewhere specified or included.
7202.21.75	Ferrosilicon containing by weight more than 80% but not more than 90% of silicon.
7202.21.90	Ferrosilicon containing by weight more than 90% of silicon.
7209.15.00	Flat-rolled products of iron or nonalloy steel, of a width of 600 mm or more, in coils, not further worked than cold-rolled, of a thickness of 3 mm or more, not clad, plated or coated.
7209.16.00	Flat-rolled products of iron or nonalloy steel, of a width of 600 mm or more, in coils, not further worked than cold-rolled, of a thickness exceeding 1 mm but less than 3 mm, not clad, plated or coated.
7209.17.00	Flat-rolled products of iron or nonalloy steel, of a width of 600 mm or more, in coils, not further worked than cold-rolled, of a thickness 0.5 mm or more but not exceeding 1mm, not clad, plated or coated.
7209.25.00	Flat-rolled products of iron or nonalloy steel, of a width of 600 mm or more, not in coils, not further worked than cold-rolled, of a thickness of 3 mm or more, not clad, plated or coated.
7209.26.00	Flat-rolled products of iron or nonalloy steel, of a width of 600 mm or more, not in coils, not further worked than cold-rolled, of a thickness exceeding 1 mm but less than 3 mm, not clad, plated or coated.
7209.27.00	Flat-rolled products of iron or nonalloy steel, of a width of 600 mm or more, not in coils, not further worked than cold-rolled, of a thickness of 0.5 mm or more but not exceeding 1 mm, not clad, plated or coated.
7211.23.20	Flat-rolled products of iron or nonalloy steel (not high-strength steel), of a width of less than 300 mm, not further worked than cold-rolled, containing less than 0.25% by weight of carbon, of a thickness exceeding 1.25 mm, not clad, plated or coated.
7211.23.30	Flat-rolled products of iron or nonalloy steel, of a width of less than 300 mm, not further worked than cold-rolled, containing less 0.25% by weight of carbon, of a thickness exceeding 0.25 mm but not exceeding 1.25 mm, not clad, plated or coated.
7211.23.60	Flat-rolled products of iron or nonalloy steel, of a width of 300 mm or more but less than 600 mm, not further worked than cold-rolled, containing less than 0.25% by weight of carbon, not clad, plated or coated.
7211.29.20	Flat-rolled products of iron or nonalloy steel, of a width of less than 300 mm, not further worked than cold-rolled, containing 0.25% or more by weight of carbon, of a thickness exceeding 0.25 mm, not clad, plated or coated.

HTS subheadings	Product description
7211.29.60	Flat-rolled products of iron or nonalloy steel, of a width of 300 mm or more but less than 600 mm, not further worked than cold-rolled, containing 0.25% or more by weight of carbon, not clad, plated or coated.
7213.10.00	Iron or nonalloy steel concrete reinforcing bars and rods, in irregularly wound coils, hot-rolled.
7214.99.00	Iron or nonalloy steel bars and rods, not further worked than hot-rolled, hot-drawn or hot-extruded but including those twisted after rolling, not elsewhere specified or included.
7215.50.00	Iron or nonalloy steel bars and rods, not further worked than cold-formed or cold-finished, not elsewhere specified or included.
7225.40.30	Flat-rolled products of other alloy steel, of a width of 600 mm or more, not further worked than hot-rolled, not in coils, of a thickness of 4.75 mm or more.
7228.20.10	Other bars and rods of silico-manganese steel, not cold-formed.
7228.30.80	Other bars and rods of other alloy steel, not further worked than hot-rolled, hot-drawn or extruded.
7228.40.00	Other bars and rods of other alloy steel, not further worked than forged.
7228.50.10	Other bars and rods of alloy tool steel (other than high-speed steel), not further worked than cold-formed or cold-finished.
7228.50.50	Other bars and rods of other alloy steel, not further worked than cold-formed or cold-finished.
7302.10.10	Rails for railway or tramway tracks, of iron or nonalloy steel.
7304.10.10	Seamless line pipe of a kind used for oil and gas pipelines of iron (other than cast iron) or nonalloy steel.
7304.29.20	Seamless casing pipe, not threaded or coupled, of a kind used in drilling for oil or gas, of iron (other than cast iron) or nonalloy steel.
7304.39.00	Other tubes, pipes and hollow profiles, seamless, of circular cross section, of iron (other than cast iron) or nonalloy, not elsewhere specified or included.
7326.90.85	Other articles of iron or steel, not elsewhere specified or included.
7402.00.00	Unrefined copper; copper anodes for electrolytic refining.
7601.20.90	Unwrought aluminum alloys not elsewhere specified or included.
8418.69.00	Other refrigerating or freezing equipment not elsewhere specified or included; heat pumps, other than the air-conditioning machines of heading 8415.
9506.11.20	Cross-country snow skis.
9506.11.40	Snow-skis (other than cross-country).
9506.99.25	Ice-hockey and field-hockey articles and equipment, except balls and skates, and parts and accessories thereof.

[FR Doc. 01–20151 Filed 8–9–01; 8:45 am]
BILLING CODE 3190–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Public Comments on the Caribbean Basin Economic Recovery Act and the Caribbean Basin Trade Partnership Act: Report to Congress

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and solicitation of public comment.

SUMMARY: The Trade Policy Staff Committee (TPSC) is seeking the views of interested parties on the operation of the Caribbean Basin Economic Recovery Act (CBERA), as amended by the Caribbean Basin Trade Partnership Act (CBTPA) (19 U.S.C. 2701 et seq.). Section 212(f) of the CBERA, as amended, requires the President to submit a report to the Congress regarding the operation of the CBERA and CBTPA (known collectively as the Caribbean Basin Initiative, or CBI) on or before December 31, 2001 and every two years thereafter. The TPSC invites written comments concerning the operation of the CBI and on the performance of CBTPA beneficiary countries under the criteria described in section 213(b)(5)(B) of the CBERA, as amended.

DATES: Public comments are due at USTR by September 14, 2001.

ADDRESSES: Office of the U.S. Trade Representative, 600 17th Street NW., Washington, DC 20508

FOR FURTHER INFORMATION CONTACT: Christopher Wilson, Director for Central America and the Caribbean, Office of the Americas, Office of the United States Trade Representative, (202) 395–5190.

SUPPLEMENTARY INFORMATION: Interested parties are invited to submit comments on any aspect of the program's operation, including the performance of beneficiary countries under the criteria described in section 213(b)(5)(B) of the CBERA, as amended, and provided below. Other issues to be examined in this report include: The CBI's effect on the volume and composition of trade and investment between the United States and the Caribbean Basin beneficiary countries; its effect in promoting economic growth and development of the beneficiary countries; and its effect in advancing U.S. trade policy goals as set forth in the CBTPA.

Current CBERA/CBTPA Beneficiary Countries: Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, Costa Rica, Dominica, Dominican Republic, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Montserrat, Netherlands Antilles, Nicaragua, Panama, St. Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Trinidad and Tobago, and British Virgin Islands.

CBTPA Criteria

(1) Whether the beneficiary country has demonstrated a commitment to undertake its obligations under the WTO on or ahead of schedule and participate in negotiations toward the completion of the FTAA or another free trade agreement.

(2) The extent to which the country provides protection of intellectual property rights consistent with or greater than the protection afforded under the Agreement on Trade-Related Aspects of Intellectual Property Rights.

(3) The extent to which the country provides internationally recognized worker rights, including—

''(I) the right of association;

''(II) the right to organize and bargain collectively;

''(III) a prohibition on the use of any form of forced or compulsory labor;

''(IV) a minimum age for the employment of children; and

''(V) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health;

(4) Whether the country has implemented its commitments to eliminate the worst forms of child labor.

(5) The extent to which the country has met U.S. counter-narcotics certification criteria under the Foreign Assistance Act of 1961.

(6) The extent to which the country has taken steps to become a party to and implements the Inter-American Convention Against Corruption.

(7) The extent to which the country applies transparent, nondiscriminatory and competitive procedures in government procurement, and contributes to efforts in international fora to develop and implement rules on transparency in government procurement.

Public Comment

Written comments should be addressed to Gloria Blue, Executive Secretary, TPSC, Office of the U.S. Trade Representative, Room F516, 600 17th Street, NW., Washington, DC 20508. Twenty copies must be submitted. Comments must be submitted by 5 p.m. on September 14, 2001. Non-confidential information received will be available for public inspection by appointment, in the USTR Reading Room, Monday through Friday, 10 a.m. to 12 noon and 1 p.m. to 4 p.m. For an appointment call Brenda Webb on 202–395–6186. All submissions must be in English and should conform to the information requirements of 15 CFR part 2003. Any business confidential material must be clearly marked as such on the cover letter or page and each succeeding page, and must be accompanied by a non-confidential summary thereof.

Carmen Suro-Bredie,

Chair, Trade Policy Staff Committee.

[FR Doc. 01–20145 Filed 8–9–01; 8:45 am]

BILLING CODE 3190–01–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA–2001–10349]

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Federal Transit Administration (FTA) to request the Office of Management and Budget (OMB) to extend the following currently approved information collection: 49 U.S.C. Sections 5309 and 5307 Capital Assistance Programs.

DATES: Comments must be submitted before October 9, 2001.

ADDRESSES: All written comments must refer to the docket number that appears at the top of this document and be submitted to the United States Department of Transportation, Central Dockets Office, PL–401, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address from 10 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard/envelope.

FOR FURTHER INFORMATION CONTACT: Ms. Sue Masselink, Office of Program Management, (202) 366–1630.

SUPPLEMENTARY INFORMATION: Interested parties are invited to send comments regarding any aspect of this information collection, including: (1) The necessity and utility of the information collection for the proper performance of the functions of the FTA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection.

Title: 49 U.S.C. Sections 5309 and 5307 Capital Assistance Programs (*OMB Number: 2132–0543*).

Background

49 U.S.C. Sections 5309 Capital Program and Section 5307 Urbanized Area Formula Program authorize the Secretary of Transportation to make grants to State and local governments and public transportation authorities for financing mass transportation projects. Grant recipients are required to make information available to the public and to publish a program of projects for affected citizens to comment on the proposed program and performance of the grant recipients at public hearings. Notices of hearings must include a brief description of the proposed project and be published in a newspaper circulated in the affected area. FTA also uses the information to determine eligibility for funding and to monitor the grantees' progress in implementing and completing project activities. The information submitted ensures FTA's compliance with applicable federal laws and OMB Circular A–102.

Respondents: State and local government, business or other for-profit institutions, and non-profit institutions.

Estimated Annual Burden on Respondents: 54 hours for each of the 3,675 respondents.

Estimated Total Annual Burden: 198,466 hours.

Frequency: Annual.

Issued: August 7, 2001.

Dorrie Y. Aldrich,

Associate Administrator for Administration.

[FR Doc. 01–20153 Filed 8–9–01; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Preparation of Environmental Impact Statement on Transit Improvements Between Denver and Golden, CO

AGENCY: Federal Transit Administration (FTA), U.S. Department of Transportation (DOT).

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Federal Transit Administration (FTA) is issuing this notice to advise agencies and the public that, in accordance with the National Environmental Policy Act, FTA and the Denver Regional Transportation District (RTD), in cooperation with the Denver Regional Council of Governments, will prepare an environmental impact statement (EIS) to evaluate transit improvements, including a potential light rail transit (LRT) line, in the West Corridor from Denver to Lakewood and Golden in Jefferson County, Colorado.

DATES: Three public scoping meetings, one meeting each in Denver, Lakewood, and Golden, Colorado, will be held in September 2001. Details as to the specific locations, dates, and times of the public scoping meetings will be advertised in local newspapers and other media. An interagency scoping meeting will be held on August 30, 2001 at 9 a.m. in the RTD Conference Room. See **ADDRESSES** below. Written comments on the scope of the EIS, including the alternatives to be considered and the impacts to be studied, may be sent to David Hollis, Project Manager, Regional Transportation District by October 14, 2001. See **ADDRESSES** below.

ADDRESSES: Written comments on the project scope should be sent to David Hollis, Project Manager, Regional Transportation District, Systems Planning Division, Planning and Development Department, 1600 Blake Street, Denver, Colorado 80202–1399. Telephone: 303–299–2404; fax: 303–299–2425. The interagency scoping meeting on August 30, 2001 at 9 a.m.

will be in the RTD Conference Room, Alamo Building, Suite 560, 1401 Seventeenth Street, Denver, Colorado 80202. All scoping meetings will be held in wheelchair-accessible locations.

FOR FURTHER INFORMATION CONTACT: Mr. David Beckhouse, Community Planner, Federal Transit Administration, (303) 844–3242.

SUPPLEMENTARY INFORMATION

I. Scoping

FTA and RTD will establish the scope of the EIS for the West Corridor after evaluating the results of the Major Investment Study (MIS) for the corridor completed in July 1997, after consulting with Federal, State, and local resource and regulatory agencies through meetings and correspondence, and after hearing from the general public. Interested individuals, organizations, and agencies are invited to participate in defining the alternatives to be evaluated and related issues of concern. A summary of the MIS and its results is available for public review at the following public libraries: Denver Central Library (10 West 14th Avenue, Denver), Lakewood Library (10200 West 20th Avenue, Lakewood), and Golden Library (1019 10th Street, Golden). The MIS summary is will also be available on the project website at www.rtdwestcorridor.com after September 1, 2001, or by contacting David Hollis, the RTD project manager, at the address and phone numbers given above under **ADDRESSES.** Also contact Mr. Hollis to be placed on the project mailing list and receive information about the public scoping meetings and the project newsletter. Written comments on the alternatives and potential impacts to be considered should be sent to David Hollis of RTD.

II. Description of Corridor and Transportation Needs

Federal transit law requires that projects proposed for FTA funding come from a long range metropolitan transportation plan that is fiscally constrained and conforms to State air quality plans. The Denver Regional Transportation Plan (RTP) identifies additional capacity for east-west travel in the West Corridor as one of the most needed projects that is affordable by the region over the next 20 years. Because the Denver region is an air quality non-attainment area for carbon monoxide and small particulate matter (PM–10), the RTP must consider air quality in its prioritization of transportation projects for the region. The RTP identifies the need for transit improvements in the West Corridor to address existing as well as projected congestion and to improve air quality, or at least to not degrade it any further. The West Corridor Transit Project is included in the Transportation Improvement Plan (TIP).

III. Proposed Action

The EIS scoping process will include an evaluation of the results of the MIS for the West Corridor completed in July 1997, which looked at several alternatives to handle the travel demand in the West Corridor, within the boundaries of Alameda Avenue and 26th Avenue and the city of Golden and the Central Business District (CBD) of Denver. The locally preferred alternative (LPA) of the MIS was LRT on new double tracks from the CBD along the existing right-of-way of the former Associated Railroad and Denver Interurban Transit line. This right-of-way runs west from Denver to Lakewood generally between 12th and 13th Avenues to the Cold Spring Park-n-Ride at 6th Avenue and Simms. The LRT line would continue west of the Cold Spring Park-n-Ride to a location near the junction of US 6 and US 40. The LRT line will also have to cross the South Platte River to connect with the Central Platte Valley Corridor LRT line currently under construction. Roadway, pedestrian and bike improvements were included in the LPA, with improved passenger waiting areas at bus stops, a multiple-use trail, and sidewalk improvements. Modifications to bus service in the West Corridor were also proposed in the LPA, including new circulator and feeder routes to connect residential and employment areas of the corridor with the LRT system. Transit service to and from the CBD and the West Corridor neighborhoods would be improved during peak travel periods. These recommendations were approved by Denver Regional Council of Governments and included in the fiscally constrained RTP and the MetroVision 2020 master plan.

IV. Public Involvement

A comprehensive public involvement program has been developed. The program includes a project web site (www.rtdwestcorridor.com); outreach to local and county officials and community and civic groups; a public scoping process to define the issues of concern among all parties interested in the project; a public hearing on release of the draft environmental impact statement (DEIS); establishment of walk-in project offices in the corridor; and development and distribution of project newsletters.

V. Alternatives

FTA and RTD propose that the EIS evaluate the following three alternatives. The no-action alternative is the option of implementing nothing more than the existing and committed road and transit systems. The TSM alternative includes various transportation improvements beyond the existing and committed projects plus enhanced bus transit service in the West Corridor. The MIS LPA will be evaluated as the proposed project. This alternative includes an LRT line extending from the Central Platte Valley Corridor across the South Platte River west along the existing Associated Railroad right-of-way to the Cold Spring Park-n-Ride facility and extending further west along a new right-of-way to a location near the junction of US 6 and US 40. The EIS will also consider any additional reasonable alternatives identified during scoping that provide similar transportation benefits while reducing or avoiding adverse impacts.

VI. Probable Effects and Potential Impacts for Analysis

The FTA and RTD will evaluate all environmental, social, and economic impacts of the alternatives analyzed in the EIS. The impact areas to be addressed include land use; visual/aesthetic values; ecosystems; mineral resources; cultural and historical resources; water quality, floodplains, and drainage; air quality; noise and vibration; traffic and parking; hazardous materials; utilities; energy use and conservation; public safety and security; and community and economic impacts. The EIS will evaluate potential environmental justice issues as well as secondary, cumulative, and construction-related impacts. The need for right-of-way acquisitions and relocations will also be evaluated. Alternative alignments, designs, station locations, and other measures to avoid, minimize, and mitigate adverse impacts will be developed and evaluated.

VII. FTA Procedures

In accordance with FTA policy, all Federal laws, regulations, and executive orders affecting project development, including but not limited to the regulations of the Council on Environmental Quality and FTA implementing NEPA (40 CFR parts 1500–1508, and 23 CFR part 771), the 1990 Clean Air Act Amendments, Section 404 of the Clean Water Act, Executive Order 12898 regarding environmental justice, the National Historic Preservation Act, the Endangered Species Act, and Section

4(f) of the DOT Act, will be addressed to the maximum extent practicable during the NEPA process. In addition, RTD seeks § 5309 New Starts funding for the project and will therefore be subject to the FTA New Starts regulation (49 CFR part 611). This New Starts regulation requires the submission of certain specified information to FTA to support an RTD request to initiate preliminary engineering, which is normally done in conjunction with the NEPA process.

Dated: August 7, 2001.

Lee O. Waddleton,

FTA Regional Administrator.

[FR Doc. 01–20152 Filed 8–9–01; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2001–42

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2001–42, Modified Endowment Contract Correction Program Extension.

DATES: Written comments should be received on or before October 9, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Modified Endowment Contract Correction Program Extension.

OMB Number: 1545–1752.

Revenue Procedure Number: Revenue Procedure 2001–42.

Abstract: Revenue Procedure 2001–42 allows issuers of life insurance contracts whose contracts have failed to meet the tests provided in section 7702A of the Internal Revenue Code to cure these contracts that have inadvertently become modified endowment contracts.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 10.

Estimated Average Time Per Respondent: 100 hours.

Estimated Total Annual Reporting Hours: 1,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 7, 2001.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 01–20147 Filed 8–9–01; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Friday,
August 10, 2001

Part II

Commodity Futures Trading Commission

17 CFR Parts 1, 5, 15, et al.

Trading Facilities, Intermediaries and Clearing Organizations; New Regulatory Framework; Final Rule

17 CFR Part 40

Fees for Product Review and Approval; Final Rule

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 5, 15, 36, 37, 38, 40, 41, 100, 166, 170 and, 180

RIN 3038–AB63

A New Regulatory Framework for Trading Facilities, Intermediaries and Clearing Organizations

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rulemaking.

SUMMARY: The Commodity Futures Trading Commission (Commission or CFTC) is promulgating final rules to implement those provisions of the Commodity Futures Modernization Act of 2000 (CFMA) relating to trading facilities. The CFMA profoundly altered federal regulation of commodity futures and option markets. The new statutory framework establishes two categories of markets subject to Commission regulatory oversight, designated contract markets and registered derivatives transaction execution facilities, and two categories of exempt markets, exempt boards of trade and exempt commercial markets. These rules establish administrative procedures necessary to implement the CFMA, interpret certain of the CFMA's provisions and provide guidance on compliance with various of its requirements. In addition, the Commission, under its exemptive authority, in a limited number of instances is providing relief from, or greater flexibility than, the CFMA's provisions.

Rules implementing the CFMA relating to clearing organizations were recently proposed in a separate notice of proposed rulemaking (66 FR 24308 (May 14, 2001)), and rules pertaining to intermediaries which were previously withdrawn will be reproposed at a later time.

EFFECTIVE DATE: October 9, 2001.

FOR FURTHER INFORMATION CONTACT: Paul M. Architzel, Chief Counsel, Nancy E. Yanofsky, Assistant Chief Counsel, Division of Economic Analysis; Alan L. Seifert, Deputy Director, or Riva Spear Adriance, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5260. E-mail: PArchitzel@cftc.gov, NYanofsky@cftc.gov, ASeifert@cftc.gov or RAdriance@cftc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

A. Overview

The Commission on June 22, 2000, proposed (65 FR 38986) and on December 13, 2000, issued (65 FR 77962) final rules promulgating a new regulatory framework to apply to multilateral transaction execution facilities that trade contracts of sale of a commodity for future delivery or commodity options.[1] The final rules were to become effective on February 12, 2001.

Before the Commission's new regulatory framework became effective, however, Congress on December 15, 2000, passed, and President Clinton on December 21, 2000, signed into law, the Commodity Futures Modernization Act of 2000 (CFMA)[2], which substantially amended the Commodity Exchange Act, 7 U.S.C. 1 *et seq.* (Act). The Act, as amended by the CFMA, establishes two tiers of regulated markets, designated contract markets (contract markets) and registered derivatives transaction execution facilities (DTFs). In addition, the Act, as amended, provides for two categories of markets exempt from regulation, exempt boards of trade and exempt commercial markets.

The CFMA, in both its broad contours and in many of its specific provisions, codified the Commission's new regulatory framework without significant change. However, it varied from the rules implementing the framework in a number of details and rendered unnecessary a number of those rules by enacting their provisions into law. The Commission, therefore, withdrew most of the final rules in order to determine their consistency with the Act as amended.[3] 65 FR 82272. On March 9, 2001, the Commission proposed new rules conforming to and implementing the amended statutory scheme with respect to transaction execution facilities. 66 FR 14262.[4]

B. The Proposed Rules

The Commission proposed a new part 38 relating to contract markets that, as proposed, would exempt contract markets operating under part 38 from all Commission rules not specifically reserved.[5] Part 38 also proposed application and approval procedures for new contract markets, including a 60-day fast-track approval procedure as well as procedures for product listing and amendments. Proposed part 38 also contained a number of rules explaining the Commission's interpretation of several statutory requirements.

Proposed part 37 construed section 5a of the Act, which provides for registration of DTFs. The proposed rules identified the commodities eligible to be traded on a DTF as a matter of right under section 5a(b)(2)(A) through (C) of the Act, as those defined as ''excluded'' commodities in section 1a(13) of the Act.[6] Part 37 also proposed a procedure under which a specific DTF could petition to list contracts on additional commodities. The Commission also proposed a number of provisions providing greater administrative flexibility in the registration[7] and oversight of DTFs than provided for in the Act, as amended. Proposed appendices to parts 37 and 38 provided general guidance for complying with the rules.

The Commission also proposed a new part 36 relating to exempt boards of trade and exempt commercial markets. Transactions entered into by eligible commercial entities in exempt commodities[8] traded on an electronic trading facility, are exempt commercial markets under section 2(h)(3) of the Act.[9] Markets that satisfy the initial and

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[1] *See also* Rules Relating to Intermediaries of Commodity Interest Transactions, 65 FR 77993 (Dec. 13, 2000), and A New Regulatory Framework for Clearing Organizations, 65 FR 78020 (Dec. 13, 2000). These three related rule packages in their entirety constituted the Commission's new regulatory framework.

[2] P.L. 106–554, 114 Stat. 2763

[3] The Commission determined not to withdraw rules concerning the investment of customer funds, but rather moved forward their effective date to December 28, 2000. See 65 FR 82270 (Dec. 28, 2000).

[4] The Commission separately proposed rules implementing the CFMA with respect to Commission-regulated derivatives clearing organizations. 66 FR 24308 (May 14, 2001). Implementation of the CFMA also requires the Commission to undertake a number of rulemakings in addition to those that were part of the Commission's new regulatory framework, such as rules relating to security futures products. Those rulemaking proceedings are separate from the rules being adopted herein. Finally, rules relating to intermediaries that were included in the new regulatory framework withdrawn in December, but which are not required by the CFMA, will be reproposed by the Commission at a later date.

[5] It should be noted that rules that are not being reserved with respect to their application to contract markets (or DTFs) will still apply to intermediaries, or clearing organizations, and contract market members, if relevant to those entities. *See, e.g.,* Commission rule 1.35.

[6] Section 1a(13) of the Act defines an ''excluded commodity'' to mean, among other things, an interest rate, exchange rate, currency, credit risk or measure, debt instrument, measure of inflation, or other macroeconomic index or measure.

[7] As proposed, existing contract markets need only notify the Commission of their intent to operate as a DTF, and file with the Commission the DTF's rules and a certification that they meet all of the requirements for registration as a DTF.

[8] *See* section 1a(14) of the Act.

[9] *See* sections 2(e)(1) and 2(h)(3) of the Act, as added by sections 104 and 106 of the CFMA. The Act refers to electronic commercial markets as ''excluded'' from the Act's regulatory requirements that are not qualifying conditions for the

ongoing requirements of sections 2(h)(3) through (5) of the Act, as amended, are excluded from the Act's other requirements. The Commission proposed rules in part 36 to implement the notification requirements of section 2(h)(5)(A) of the Act, and the information requirements for exempt commercial markets consistent with section 2(h)(5)(B) of the Act.

In part 36, the Commission also proposed rules implementing Section 5d of the Act, which establishes the category of ''exempt board of trade.'' Commission rule 36.2 proposed to define those commodities that are eligible to trade on an exempt board of trade to include commodities defined in section 1a(13) of the Act as ''excluded commodities,'' other than securities, and such other commodities as the Commission may define by rule, regulation or order. In addition, rule 36.2(b) proposed the form and manner of the notification to the Commission provided for under section 5d of the Act.

The Commission also proposed an antifraud provision, proposed rule 1.1, pursuant to its authority in sections 3 and 8a(5) of the Act. This proposed anti-fraud rule would apply to foreign currency transactions described in section 2(c)(1) of the Act.

Finally, the Commission proposed to delete Part 180 of its rules governing arbitration of disputes arising on contract markets, and reproposed its withdrawn rule 166.5, incorporating the new provision added by the CFMA, which permits an FCM to require an eligible contract participant to waive the right to reparations as a condition of using the FCM's services.

C. Overview of Comments

The Commission received a total of 20 comments [10] from a range of commenters, including a government agency, an association of state securities regulators, a self-regulatory organization,[11] five futures exchanges,[12] a derivatives clearing organization,[13] eight trade associations,[14] a trading firm, an attorney and a group of energy firms.[15]

Most commenters generally supported the proposed rules, especially those provisions that offered greater flexibility than provided by the CFMA. Commenters also expressed support for the guidance regarding compliance with the core principles applicable to contract markets and DTFs. Many commenters offered specific recommendations for clarification of the rules or requested that the Commission clarify how the rules would be applied in specific circumstances.

II. The Final Rules

A. Part 38—Contract Markets

Part 38 governs trading on designated contract markets. Under rule 38.2, contract markets operating under this part are exempt from all Commission rules not specifically reserved. Rule 38.3 contains application and approval procedures for new contract markets, including a 60-day fast-track approval procedure. The designation procedures, which include Commission authority to designate a contract market upon conditions, require applicants to (1) demonstrate that they satisfy the criteria for designation under section 5(b) of the Act and the core principles for operation under section 5(d) of the Act; (2) to include a copy of the contract market's rules; and (3) to provide a brief explanation of how the conditions for designation are satisfied to the extent that compliance with the conditions for designation is not self-evident.

Based upon its experience in processing applications for designation following proposal of these rules,[16] the Commission is modifying final rule 38.3 to make clear that an applicant may instruct the Commission in writing at the time of application, to review the application under the procedures of section 6 of the Act, which provide for approval within 180 days, rather than under the rule's fast-track review procedures. This is different than the proposed rule, which provided that an applicant could instruct the Commission in writing ''during the review period'' to review the application under the statutory review procedure.[17] Absent such a written instruction, the application will be reviewed under the fast-track procedures, as was proposed.[18]

The Commission is modifying proposed rule 38.4 (also based upon its administrative experience) to provide that the operational rules of an applicant for contract market designation and the terms or conditions of any products to be listed for trading that have been filed for voluntary Commission approval with the application or while it is pending shall be deemed approved by the Commission no earlier than at the time that the facility itself is deemed to be designated. This proviso has been added to final rule 38.4 to conform the time for review and approval of the rules of an applicant—in cases where the applicant voluntarily requests Commission approval of its operational or product-related rules—with the review period for the application for contract market designation itself.

In response to a number of comments, proposed rule 38.3(b)(2) is being modified. The rule as proposed would have interpreted the designation requirement on fair and equitable trading to include making available to market participants timely information on prices, bids and offers. A number of commenters suggested that the proposed requirement be modified to apply in a

exemption. These qualifying conditions are found in paragraphs 2(h)(4) and (5). Moreover, it should be noted that among these qualifying conditions, the Commission is authorized to promulgate rules to ensure disclosure of prices and to specify procedures regarding redress by participants to an order denying them access in response to a determination that the participant did not comply with a subpoena issued by the Commission. *See* sections 2(h)(4)(D), 2(h)(5)(C)(ii) and 2(h)(6) of the Act.

[10] In this Notice of Final Rulemaking, comment letters (CL) are referenced by the letter's file number and page. These letters are available through the Commission's internet web site, *http://www.cftc.gov*.

[11] They are: United States Department of the Treasury (Treasury) (CL 14), North American Securities Administrators Association, Inc. (NASAA) (CL 2), and National Futures Association (NFA) (CL 16), respectively.

[12] They are: Board of Trade of the City of New York, Inc. (NYBOT) (CL 5),; Chicago Board of Trade (CBT) (CL 7),; New York Mercantile Exchange (NYMEX) (CL 10), Minneapolis Grain Exchange (MGE) (CL 15), and Chicago Mercantile Exchange (CME) (CL 18).

[13] Board of Trade Clearing Corporation (BOTCC) (CL 1).

[14] They are: International Swaps and Derivatives Association, Inc. (ISDA) (CL 3), @Markets (CL 6), National Grain and Feed Association (NGFA) (CL 9), Futures Industry Association (FIA) (CL 11), the Silver Users Association (SUA) (CL 12), National Grain Trade Council (NGTC) (CL 17), Association of the Bar of the City of New York (NY Bar) (CL 19) and Securities Industry Association (SIA) (CL 20).

[15] They are: Advance Trading, Inc. (CL 13), Thomas Muth, Esq. (CL 8), and Energy Group (CL 4), respectively. In addition to the written comments, the proposed rules were discussed at a March 28, 2001, meeting of the Commission's Agricultural Advisory Committee (AAC), chaired by Commissioner David D. Spears. A transcript of the AAC meeting is also included in the Commission's comment file and is available on the Commission's website.

[16] In its notice of proposed rulemaking, the Commission stated that during the transition period between the effective date of the CFMA and the adoption of final implementing regulations, it would, in effect, permit applications to be filed under the procedures as proposed. 66 FR 14268.

[17] Two applicants have indicated that they preferred for their applications to be processed more slowly than provided for under the fast-track rules and that the rule explicitly should permit applicants to so indicate at the time the application is filed. The Commission agrees.

[18] The Commission is making a similar clarification to rule 37.5(b)(5), relating to applications for registration as a DTF.

manner ''appropriate to the market.'' [19] As the CBT suggested:

> while it may be expected that an electronic market would be able to routinely capture and disseminate bids and offers entered into the trading system, as well as execution prices, it is difficult for an open outcry market to do the same.

CL 7–7. *See also* CL 10–3 and CL 18–3.

The Commission agrees and is modifying the final rule by including the ''appropriate to the market'' language that it had previously included in the withdrawn rules.[20] Currently, most open-outcry markets generally capture price changes only. By including the ''appropriate to the market'' language, the Commission intends to make clear that it is not applying to open-outcry markets a standard for disseminating such information that is higher than the one presently in effect. However, the Commission expects that electronic trading systems can, and appropriately will, capture such information for every transaction, not just for those involving a price change.

CBT asked the Commission to clarify application of the core principle on fitness under section 5(d)(14) of the Act. That provision of the Act requires contract markets to apply appropriate fitness standards for ''directors, members of any disciplinary committee, members of the contract market, and any other persons with direct access to the facility.'' Regarding ''direct access,'' CBT noted:

> automated order routing systems may enable numerous customers to send their orders directly to a trading floor or to an electronic trading system. Such trades may be intermediated and/or guaranteed by a clearing FCM. The CBOT does not believe that the Commission intended to require markets to impose fitness requirements on such customers.

CL 7–8. *See also* CL 5–4, CL 19–5.

Generally, the core principles are intended to apply to contract markets (and DTFs) regardless of the form of business organization.[22] Section 5(d)(14) requires persons who exercise governance responsibilities or control of the trading facility to meet a fitness requirement.[22] In a mutually-owned enterprise, members would exercise such governance authority. In a demutualized contract market, the facility's owner or owners would have such authority.[23] CBT correctly observes that customers having direct trading access through an automated order entry routing system or otherwise do not exercise a member's governance authority.[24] The Commission interprets the core principle on fitness under section 5(d)(14) of the Act as not requiring contract markets to establish fitness standards for customers as a consequence of their using direct order routing systems to trade.

NY Bar raised a similar concern, stating that:

> Appendix A to Part 38 in Designation Criterion 6 states that a contract market must have authority to discipline ''market participants.'' It should be made clear that this does not apply to customers of members.

CL 19–5. *See also* CL 5–5.

The Commission does not agree. Designation criterion 6 (Section 5(b)(6) of the Act) provides, in part, that:

> a board of trade shall establish and enforce disciplinary procedures that authorize the board of trade to discipline, suspend, or expel members or market participants that violate the rules of the board of trade, or similar methods for performing the same functions.

Contract markets have the authority to deny access to persons who violate their rules, either directly, or indirectly through their members. The Commission also recognizes, however, that a contract market might encounter difficulty in enforcing fines or other sanctions to remedy violations of its rules by persons trading on a market that do not have a significant ownership interest in the facility. Accordingly, the Commission proposed in rule 38.3(b)(3) to make clear ''that a trading facility applying for designation may satisfy the requirement that it have disciplinary procedures with respect to non-members by having the capacity to sanction non-member violations by expelling them or by denying them future access.'' 66 FR 14263, n. 7. Part 38, Appendix A, reflects rule 38.3(b)(3)'s interpretation of designation criterion 6 that a contract market need only have authority to deny access to such persons.

Nevertheless, the Commission is modifying rule 38.3(b)(3) and Appendix A, in light of NY Bar's comment, to clarify that the denial of access may be either direct by order to the market participant or indirect by order to contract market members. The Commission is also clarifying that the capacity to expel or deny access to a member with trading privileges but having no, or only nominal equity interest in the facility, also satisfies the requirements of designation criterion 6. In this regard, the definition of ''member'' in section 1a(24) of the Act includes persons with trading privileges. Such persons may have trading privileges under a ''user agreement'' with the facility or trading platform or by virtue of a non-equity ''membership'' of only nominal value. Levying fines or imposing other types of sanctions against non-equity ''members'' may be as difficult as imposing such remedies against non-member market participants.[25]

Core principle 4 requires contract markets to monitor trading to prevent manipulation. Part 38, Appendix B, provided that contract markets, as an acceptable practice, should have access to clearing information. BOTCC points out that, because a contract market's provider of clearing services may be a completely independent entity, the clearing entity should be required to provide such information to a contract market ''only in furtherance of the contract market's self-regulatory responsibilities and only upon a showing of need or other good cause.'' CL 1–2. CBT disagreed, reasoning that, ''it is crucial to the performance of a contract market's trade monitoring function that it retains such access without any restrictions or any special showing of need.'' CL 7–6; CL 10–3. The Commission agrees that a contract market must be able to obtain such information without limitation. Accordingly, contract markets, by contract, must provide for such unimpeded access to information from third-parties performing clearing functions for the contract market.

NYBOT asked the Commission to modify the guidance for the designation criterion on the financial integrity of

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[19] The suggested revision applies equally to proposed rule 37.6(d)(3) relating to DTFs, which has a similar provision.

[20] The Commission also is making conforming changes to Part 38, Appendix A, Criterion 3 and to Part 37, Appendix B, Core Principle 4.

[21] *But see* section 5(d)(16) of the Act, which unlike the other core principles, applies only to mutually-owned contract markets.

[22] Thus, directors, members of disciplinary committees, and members are required to meet a fitness requirement. Section 1a(24) defines a member as a person ''owning or holding membership in * * * the contract market, or having trading privileges on the contract market.''

[23] The Commission clarified the core principle's application with respect to demutualized contract markets by making explicit that the core principle on fitness requires a demutualized contract market to establish fitness requirements for all natural persons that directly or indirectly have greater than a ten percent ownership interest in the facility. *See* proposed rule 38.3(b)(4).

[24] CL 7–8. *See also* comments of NYBOT, CL 5–4, and NY Bar, CL 19–5.

[25] NY Bar also suggested that Part 38, Appendix A, clarify that ''a contract market is not required to establish minimum financial standards for customers of intermediaries.'' The Commission has modified the text by removing the term ''user,'' based on the understanding that the statutory meaning of ''member'' includes those only having trading privileges on the facility.

transactions. NYBOT argued that contract market rules are not required by the Act and are unnecessary because futures commission merchants continue to be subject to the segregation and related recordkeeping requirements of section 4d of the Act and Commission rules thereunder. CL 5–3. The Commission disagrees. The CFMA specifically requires contract markets (and DTFs) to establish and enforce rules addressing the financial integrity of transactions executed on or through the board of trade or facility.[26]

The Commission anticipates that contract markets will continue to be able to fulfill their self-regulatory responsibilities concerning the financial responsibility of intermediaries through existing mechanisms, including audits conducted by designated self-regulatory organizations. The Commission has clarified this point in Appendix B, in the application guidance to Core Principle 11, and has noted explicitly that, ''A contract market may delegate to a designated self-regulatory organization responsibility for receiving financial reports and for conducting compliance audits pursuant to the guidelines set forth in rule 1.52.'' Accordingly, rule 1.52 has been added to the rules reserved under Commission rule 38.2.[27]

B. Part 37—DTFs

New part 37 implements section 5a of the Act, which provides for registration of DTFs. Rule 37.2 exempts DTFs from all Commission regulations applicable to a trading facility that are not reserved,[28] and makes clear that the reserved regulations apply as though DTFs were specifically referenced therein. Rule 37.3 identifies the commodities eligible to be traded on a DTF under section 5a(b)(2)(A) through (C) of the Act as those defined as ''excluded'' commodities in section 1a(13) of the Act.[29]

Rule 37.3 also establishes a procedure whereby a specific DTF may make an individualized showing under section 5a(b)(2)(E) of the Act that a contract is highly unlikely to be susceptible to the threat of manipulation and should be eligible for trading on that DTF in light of the characteristics of the commodity and the market's surveillance history, including its self-regulatory record, capacity and undertakings. Rule 37.3(a)(6) lists the factors that are relevant in making such a showing.

New part 37 provides greater administrative flexibility than the CFMA in the registration and oversight of DTFs, including provisions that (1) permit the Commission to register a DTF upon conditions; (2) provide a fast-track review procedure for applications for registration; and (3) permit applicants for DTF registration voluntarily to demonstrate their capacity to comply with the core principles for operation.[30] The Commission has provided two appendices giving general guidance regarding applying for registration and compliance with core principles.

Rule 37.6(d) includes interpretations of certain core principles. For example, it provides that an electronic trading platform used by eligible commercial entities only, may satisfy the requirement to monitor trading in a manner ''appropriate to the market'' by assuring compliance with its rules regarding access limitation; that the core principle on monitoring trading may be met, appropriate to the market, by providing information to the Commission as requested; and that the core principle concerning fitness standards applies to natural persons who directly or indirectly have greater than a ten percent ownership interest in a non-member-owned facility. Rule 37.7 includes several special call provisions for requesting information from a DTF, or its market intermediaries or participants. Finally, the Commission has used its section 4(c) exemptive authority to give DTFs greater procedural flexibility in amending their rules.

The Commission, based upon administrative experience in processing applications for registration following proposal of the rules, is modifying the time period for voluntary approval of the applicant's operating rules and for one product to be listed for trading on the facility. Upon registration as a DTF, the facility may list products for trading that meet the automatic eligibility and other requirements by notification to the Commission. Alternatively, it may submit new products for voluntary approval under the forty-five day fast-track review period of rule 40.3. Although no commenter specifically raised the issue, the Commission, after further consideration occasioned by inquiries from potential applicants, is modifying rule 37.7 by adding a new paragraph (c)(2) to provide that the facility's operating rules, if Commission approval is requested, and one initial contract, if submitted for voluntary approval with an application for DTF registration, will be deemed approved in thirty days, rather than the normal forty-five day period under rule 40.3(b). This modification will enable an applicant for DTF registration to have its operating rules and one product considered by the Commission for approval under the same time-frame as the registration application itself. Because this is an exception to the normal review period, it is being limited to one product only. Such a submission for voluntary product approval must comply in all

[26] *See* Designation Criterion 5 of section 5(b) of the Act, providing that a contract market ''shall establish and enforce rules and procedures for ensuring the financial integrity of transactions entered into by or through the facilities of the contract market.'' *See also* section 5a(c) of the Act, Registration Criterion 4, governing the financial integrity of transactions entered into on a DTF. The Commission notes that, in conformance with its notice of proposed rulemaking with respect to clearing, 66 FR 24308, it has modified the guidance for Designation Criterion 5 to reflect that transactions executed on a contract market, if cleared, must be cleared with a derivatives clearing organization DCO registered with the Commission, absent Commission action pursuant to its section 4(c) exemptive authority.

[27] The Commission also has modified Part 38, Appendix A, Designation Criterion 5, and Part 37, Appendix A, Registration Criterion 4, by referring to the form of margin rather than to margin ''levels.'' In this regard, it should be noted that the Commission is not mandating specific margining systems. *Compare* CL 18 at 3. In addition, the Commission has made a number of conforming or technical textual changes to Part 38, Appendix B, in response to the comments of MGE, NY Bar, NYBOT, and NYMEX. As modified, Appendix B states explicitly that Core Principle 7, which relates to public disclosure of certain information, may be satisfied through timely placement of the information on the facility's web site. The language relating to Core Principle 6 (emergency authority) now reads, ''minimize the effects of conflicts of interest.'' Core Principle 9 has been modified to make clear that the qualified independent professional testing of a system need not be performed by a third-party provider, and the discussion related to Core Principle 10 (trade information) now reads ''transaction executed on'' rather than ''effected on.'' The Commission also clarified the discussion of position limits under Core Principle 5 and of trade information under Core Principle 10.

[28] As noted in footnote 5 above, rules that also have application to intermediaries or clearing organizations would still apply to those entities even though they are not being reserved with respect to their application to DTFs.

[29] Section 5a(b)(2)(A) through (C) of the Act, as amended, provides that a DTF may trade any contract of sale of a commodity for future delivery (or option on such a contract) only if—

(A) the underlying commodity has a nearly inexhaustible deliverable supply;

(B) the underlying commodity has a deliverable supply that is sufficiently large that the contract is highly unlikely to be susceptible to the threat of manipulation; [or]

(C) the underlying commodity has no cash market[.]

Section 1a(13) of the Act, as amended, defines an ''excluded commodity'' to mean, among other things, an interest rate, exchange rate, currency, credit risk or measure, debt instrument, measure of inflation, or other macroeconomic index or measure. Excluded commodities under section 1a(13) of the Act include exempt securities. Unlike the provisions governing exempt boards of trade, the CFMA imposes no specific limitations or requirements for exempt securities to trade on a DTF.

[30] Existing contract markets need not make such a demonstration. They simply must notify the Commission of their intent to operate as a DTF, and file with the Commission the DTF's rules (or a list of its rules) and a certification that they meet all of the requirements for registration as a DTF.

other respects with the requirements of rule 40.3.[31]

In addition, commenters made a number of suggestions for modification of, or raised issues relating to, the rules as proposed. These comments relate to eligibility of persons for trading, eligibility of commodities for trading, and interpretations regarding several of the registration criteria and core principles. Several commenters also suggested a number of specific textual clarifications.

1. Trader Eligibility

The Commission proposed to include registered floor brokers and floor traders as eligible for trading on a commercial DTF. *See* proposed rule 37.1(b). CBT, NYMEX, and @Markets supported this proposal. NY Bar, however, opposed the proposed rule's requirement that an FCM guarantee the trades of such a qualifying floor broker or floor trader, arguing that ''[i]t should be sufficient if the floor trader or floor broker is simply 'qualified,' *i.e.,* that an FCM has agreed to accept all of the broker or trader's trades, instead of being fully guaranteed.'' CL 19–3; *see also* CL 5–3. The Commission does not agree that ''acceptance'' of all trades rather than a guarantee is sufficient. A guarantee provides formal assurance that another's obligation will be fulfilled, a level of assurance not necessarily provided by acceptance.[32] The Commission believes that this higher level of assurance is both necessary and appropriate for eligibility by floor brokers and floor traders as commercial entities, and is adopting the final rule as proposed.

The Commission also requested comment on whether the definition of ''eligible commercial entity'' under proposed rule 37.1(b) should be amended to include individuals whose function in electronic markets is similar to that provided by floor traders. A number of commenters generally supported including individuals who perform market-making functions on electronic trading facilities within the definition of eligible commercial entity. *See* CL 6–2, CL 4–2. @Markets, for example, opined that ''B2B markets are in their infancy''; ''certain markets may find that individual market makers are a critical element in accruing necessary liquidity''; and ''in lieu of the registration requirement * * *. such individuals [should] * * * meet the requirements for membership established by the facility.'' CL 6–3.

NYBOT and NY Bar suggested that such a liquidity provider for electronic markets should be considered to be any eligible contract participant that ''undertakes to maintain a bid and ask spread pursuant to an agreement with, or the rules of, an electronic trading facility.'' CL 5–1; CL 19–2. CBT suggested that the electronic market equivalent of a floor trader would simply be a member that has its trading guaranteed by an FCM, and that is subject to the trade practice and disciplinary rules of exchanges. CL 7–4. However, that description would be a meaningful distinction only in the context of an intermediated market. Rather than attempting to establish a rule at this time, NYMEX suggested that the Commission make such determinations over time on a case-by-case basis for each facility seeking regulatory relief in this area. CL 10–5. SIA, although supporting the concept of a functional equivalent of a floor trader for electronic markets, noted that ''most corporate entities in that category would already fall within the statutory definition of eligible commercial entity.'' CL 20–3. In light of the wide range of recommended standards, the suggestion by at least one commenter that existing categories already would cover those likely to fall within the scope of a new category for electronic market maker, and the lack of previous trading experience, the Commission is of the view that the issue should be considered based upon a fuller administrative record, after some trading experience with this type of market has been observed.

NY Bar suggested that the Commission clarify that ''[s]ection 37.3(b) is intended to permit a non-eligible commercial entity to access a commercial entity [DTF] through any FCM or broker-dealer.'' CL 19–3. Access to trade on a DTF generally is limited to eligible traders under rule 37.3(a). Eligible traders are either eligible contract participants or non-eligible contract participants trading through a registered FCM that: (1) is a member of a futures self-regulatory association (or for a facility trading only security futures products, a national securities association); (2) is a clearing member of a derivatives clearing organization; and (3) has at least $20 million net capital. *See* section 5a(b)(3) of the Act. Moreover, for transactions other than security futures products, a DTF may by rule permit a broker-dealer or a depository or Farm Credit System institution to act as intermediary ''on behalf of customers'' if such entities do not hold customer funds for more than one business day. *See* section 5a(e) of the Act.

In contrast to these provisions, section 5a(a)(2)(F) of the Act provides that a *commercial* DTF may trade any commodity (other than an enumerated agricultural commodity)[33] when access to trade on the facility is limited to eligible commercial entities *trading for their own account.* Based upon this statutory language, commercial DTFs under rule 37.3(b) are limited to eligible commercial entities (as defined in § 37.1(b)) trading for their own account. Accordingly, commercials may not execute their trades through an FCM, or any other intermediary, when trading on a commercial DTF under rule 37.3(b).[34]

2. Commodity Eligibility

Consistent with section 5(e)(2) of the Act, the Commission indicated in its notice of proposed rulemaking that it will determine in a future rulemaking whether to permit and, if so, the appropriate conditions for permitting, the enumerated agricultural commodities to trade on a DTF. 66 FR 14264. A number of commenters responded by suggesting that the enumerated agricultural commodities should be permitted to trade on a DTF immediately. *See* CL 3–3, CL 9–1, CL 18–4. The Commission intends to turn its attention to this issue at a later date in a separate rulemaking.

As a class of excluded commodities, exempt securities are eligible to be traded on a DTF. The Commission requested comment on whether exempt securities trading on a DTF should be subject to additional requirements, such as reporting requirements, not applicable to other excluded commodities.[35] CBT explained that it ''has found large trader reporting to be a useful tool for monitoring trading of futures and options on exempt securities,'' but wanted ''the form, levels and timing of any such reporting'' left

[31] Product approval is voluntary, and an applicant is not required to submit any of its products for Commission approval.

[32] Several exchanges, including CBT, NYMEX and CME, require clearing guarantees for trades by non-clearing members.

[33] The enumerated agricultural commodities are those listed in section 1a(4) of the Act, and include, among others: wheat, cotton, rice, corn, soybeans and the soybean complex, livestock, and frozen concentrated orange juice.

[34] Consistent with this provision, rule 37.1(b) includes floor brokers within the definition of ''eligible commercial entity'' only when trading for their own account.

[35] The proposed rules provided that commodities defined in section 1a(13) of the Act as ''excluded commodities'' meet the deliverable supply eligibility test for trading on a DTF. Such excluded commodities include interest rates, currencies, securities, security indexes, macroeconomic and other types of indexes, and occurrences associated with an economic consequence beyond the control of the traders.

to the discretion of individual DTFs. CL 7–5.

ISDA did not object ''in principle'' to the imposition of such requirements, but cautioned against imposing regulatory requirements in the absence of a ''compelling public interest.'' CL 3–3. SIA suggested that any large-trader reporting requirement should be consistent with market practice in the relevant cash market and only upon request of the Commission. CL 20–2.

On the other hand, the United States Department of the Treasury (Treasury) expressed the opinion that all DTFs and contract markets should enforce a large-trader reporting system for contracts based on Treasury instruments. Treasury ''reiterate(d) its belief that large trader reporting requirements * * * reveal information that is useful to regulators, and also have a deterrent effect.'' CL 14–2.

In light of all of the comments received, the Commission at this time has determined not to impose routine large-trader requirements on DTFs or their users for contracts based on Treasury instruments. Should market conditions warrant, however, the Commission will invoke its special call authority under Rule 37.8 to require such information for these contracts as the Commission deems necessary, taking into consideration the surveillance information routinely available with the DTF. The Commission's special call could require, for example, ongoing reporting of large-trader positions or other appropriate information.

In addition to excluded commodities and security futures products, the Commission, under rule 37.3(a)(6), may make an individualized determination by rule, regulation or order, that a commodity is eligible to be traded on a DTF based on the commodity's characteristics and surveillance history, and the self-regulatory record and capacity of the facility on which it is to be traded. NYMEX questioned whether such determinations were included under the thirty-day period that applies to applications for DTF registration. If not, NYMEX requested that ''the Commission specify a comparable timeframe for such determinations that would provide for resolution of such applications in a reasonably expeditious manner.'' CL 10–2.

The timing of an individualized Commission determination of commodity eligibility under rule 37.3(a)(6) is independent of a facility's initial registration as a DTF. In this regard, the rules do not require that a product be submitted for approval at the time the facility is registered as a DTF. Accordingly, the thirty-day time period for registration is independent of, and does not control, any product-specific consideration. Moreover, the Commission proposes to make case-by-case determinations with regard to eligibility of a commodity to trade on a DTF after notice and an opportunity for hearing through submission of written data, views and arguments. A number of commenters, including NYMEX and NYBOT, suggested that a petitioning DTF or applicant for DTF registration should be accorded the right to request an opportunity to present oral views and testimony to the Commission. CL 5–3, CL 10–3. The Commission concurs and will consider granting such requests in appropriate instances. Such an opportunity to present views, facts and argument orally before the Commission is not consistent with a thirty-day deadline. Accordingly, recognizing the potentially complex and highly individualistic nature of each determination, the Commission is not modifying the final rule by including a deadline. Nonetheless, the Commission intends to make these determinations expeditiously.

NYMEX also requested that the Commission clarify that the relevant approval criteria are ''meaningful only in relative terms, *i.e.,* in comparison to other markets''; that ''it is not necessary for a contract to meet all of these factors''; and how these factors might be interpreted for cash-settled or index-based contracts. CL 10–3. The Commission believes that a demonstration that a commodity meets the criteria of rule 37.3(a)(6)(ii) can be made either on an absolute basis or relative to a market that clearly meets the requirement that a ''commodity is highly unlikely to be susceptible to the threat of manipulation.'' [36] The Commission will consider such a demonstration based upon the totality of the showing, but will separately consider the petitioner's surveillance history and self-regulatory record from the commodity's general cash market characteristics. Nevertheless, the Commission would consider undertakings for enhanced surveillance and self-regulatory measures (beyond the required large-trader reporting system), such as spot-month speculative position limits, as an appropriate means to address instances where cash market characteristics alone may not provide sufficient assurance that the commodity is highly unlikely to be susceptible to the threat of manipulation.

With regard to cash-settled contracts, the Commission is modifying sub-paragraph 37.3(a)(6)(ii)(G) to make clear that the facility should be able to show that the contract or product's terms and conditions provide for a reliable and acceptable cash-settlement procedure that is adequate to minimize the threat of market abuse. The other criteria enumerated in paragraph (a)(6) apply equally to cash and physically settled contracts.

3. Registration Procedures

Proposed rule 37.5(a)(2) would have required that a contract market filing notice that it wishes to operate as a DTF include in its submission a copy of the facility's rules. NYBOT opined that ''this should not be necessary, since the rules of the contract market would already be on file with the Commission, unless and to the extent the DTEF rules are different.'' CL 5–3; *see also* CL 15–4 (MGE). The Commission is modifying the final rule to provide that the notification need only *list* those rules of the contract market that also apply to operation of the DTF.[37]

4. Interpretations of Registration Criteria and Core Principles Guidance

The Commission proposed in its registration guidance in Appendix A that ''[i]f cleared, transactions executed on the facility must be cleared through a derivatives clearing organization.'' However, in a subsequent notice of proposed rulemaking to implement the CFMA with respect to derivatives clearing organizations (DCO), the Commission clarified that,

> excluded or exempted contracts, including those elected pursuant to section 5a(g) to be traded on a registered derivates transaction execution facility, are not required to be cleared by a DCO, although a clearing organization that clears these contracts may voluntarily apply, pursuant to section 5b(b), to register with the Commission as a DCO.

66 FR 24308 (May 14, 2001).

SIA, in commenting upon the guidance in Appendix A, asserted that the registration guidance should be modified to recognize that contracts that are traded on a DTF on an ''opt-in'' basis are not required to be cleared by a DCO. CL 20 at 2. NY Bar asserted that a DTF should be permitted to clear through any recognized clearing organization including, *e.g.,* clearing organizations

[36] In this regard, the excluded commodities defined in section 1a(13) of the Act clearly meet this standard, and may be used as a benchmark for comparison.

[37] The Commission is not modifying the provisions relating to DTF applications for registration. The notification procedure is an abbreviated procedure for existing contract markets. Applicants for registration generally will not have pre-existing approved or certified rulebooks.

supervised by domestic and foreign banking authorities. CL 19–4–5. In light of these comments, and the fact that no comments were submitted in response to the Commission's clarification in the **Federal Register** notice proposing rules for clearing organizations, the Commission is modifying the guidance in Appendix A to make clear that agreements, contracts and transactions in excluded or exempt commodities that are traded on a DTF, if cleared, may be cleared through clearing organizations other than DCOs registered with the Commission.

With regard to Appendix B for DTFs, Guidance on Compliance with Core Principles, NYBOT and NY Bar suggested that the Commission add a statement similar to one included in the guidance for contract markets (Appendix B of part 38), that ''[b]oards of trade that follow the specific practices outlined . . . for any core principle below will meet the applicable core principle.'' CL 5–4, CL 19–4. The guidance for DTFs, however, in keeping with the less regulated nature of those markets, is abbreviated and general in nature, and does not include the same level of detail as the guidance for contract markets. Accordingly, unlike the guidance for contract markets, the guidance for DTFs does not outline specific acceptable practices.

NYBOT objected that the guidance on ''minimum'' fitness standards under Core Principle 6 for persons who have member voting privileges, governing obligations or responsibilities, or who exercise disciplinary authority, is not provided for in the CFMA and is unnecessarily onerous.[38] CL 5–4. The Commission agrees in part and has modified the guidance accordingly.[39] The guidance in Appendix B relating to minimum fitness standards interprets Section 5a(d)(6) of the Act, which requires DTFs to ''establish and enforce appropriate fitness standards.'' In the Commission's view, the fitness standards for the named categories of persons that should apply ats a minimum include the statutory disqualifications in section 8a(2) of the Act. Of course, DTFs remain free to impose higher fitness standards, including the statutory disqualification standards of section 8a(3) of the Act.[40] Persons who have governing obligations or responsibilities, or who exercise disciplinary authority, should not have a significant history of serious disciplinary offenses, such as those that would be disqualifying under rule 1.63.

CME and NYMEX commented that disclosing information on system security, as the proposed guidance on Core Principle 4 suggests, might compromise a system's integrity. CL 10–4, CL 18–4. The guidance did not intend that detailed, proprietary information on system security should be disclosed, and in light of these comments, the Commission has deleted this provision.[41]

C. Product Listing and Rule Amendments

Proposed part 40 would implement the procedural provisions of Section 5c(c) of the Act for new contracts, new rules and rule amendments.[42] Based on administrative experience after the part 40 rules were proposed, the Commission is amending rule 40.4 to provide contract markets greater certainty with respect to the approval of rules governing contracts on enumerated agricultural commodities. First, the Commission is adding to the list of non-material rule changes the category of rule changes necessary to comply with a binding court order, or with a rule or order of the Commission, or of another federal regulatory authority. Second, the Commission is adding a provision to the final rules that permits a contract market to submit to the Commission any rule that the contract market believes not to be material, but that is not listed as non-material in rule 40.4, and to implement the rule ten days after submission, absent contrary notice from the Commission. This procedure gives exchanges flexibility by providing that the listed categories are non-exclusive and at the same time provides a method to obtain certainty that the Commission agrees that the rule change is not material.[43]

While commenters strongly endorsed the increased flexibility of the proposed rules, *see* CL 7–2, CL 10–2, CL 18–1, several objected to certain specific requirements. In response to these comments, the Commission has decided to modify the proposed rules as discussed below.

1. Clearing

BOTCC objected to the provision of proposed rule 40.2, which would have required a DCO to certify, with respect to a product that it clears that is not traded on a contract market or a DTF, that the trading product or instrument complies with the Act. BOTCC questioned the Commission's authority to require this certification, and questioned how a DCO could make such a certification ''about a product or instrument that it has not designed and for which it is providing only a discrete set of services.'' CL 1–5. As an alternative, BOTCC suggested that the Commission could require the DCO to certify that its clearing of the product complies with the Act, although it questioned the practical utility of such a certification.

Under section 5c(c) of the Act, a registered entity may elect to ''accept for clearing any new contract or other instrument, or may elect to approve and implement any new rule or rule amendment'' by certifying to the Commission that ''clearing of the new contract or instrument, new rule or rule amendment complies with [the] Act.'' The Commission is clarifying rule 40.2 to provide that a DCO may accept for clearing any new contract or other

[38] NYBOT also asserted that there should not be any fitness standards for natural persons who directly or indirectly have greater than a ten percent interest in the facility and are merely passive investors. This issue is addressed above in connection with comments related to a similar provision applicable to contract markets.

[39] The Commission has made similar modifications to the guidance governing designated contract markets contained in Part 38, Appendix B, Core Principle 14.

[40] The Commission notes that these minimum standards are consistent with the fitness standards that Congress itself adopted for exempt commercial markets. In this regard, section 2(h)(5)(A)(iii) of the Act requires an exempt commercial market to certify to the Commission that ''no executive officer or member of the governing board of, or any holder of a 10 percent or greater equity interest in, the facility is a person described in any of subparagraphs (A) through (H) of section 8a(2)[.]''

[41] The Commission has made a similar modification to Part 38, Appendix B, Core Principle 9. *See* comment of MGE, CL 15–3.

[42] In proposing these rules, the Commission noted that, in light of the Congressional intent to implement the provisions of the CFMA without delay, during the transition period between the effective date of the CFMA and promulgation of final implementing rules, the Commission would not take any enforcement action against any person who complied with the implementing rules, as proposed. 66 FR 14268.

[43] CBT correctly asserted that rules listing additional delivery months for agricultural contracts should not be deemed to be material under rule 40.4, and thus subject to the requirement of prior approval. CL 7 at 2. Pursuant to section 5c(c)(B)(2) of the Act, the listing of additional delivery months is not subject to the prior approval requirement because such rules do not apply ''to contracts and delivery months which already have been listed for trading and have open interest.'' 7 U.S.C. 7c(c)(2)(B).

CME asserted that the Commission should not retain the distinctions between in-house changes and those made by third parties with respect to delivery standards and index constructions and calculations. It asserted that ''there are sufficient safeguards embodied in the core principles to make requirements at this level of detail obsolete.'' CL 18 at 5. The Commission notes that it exercised its section 4(c) authority to excuse independent third party delivery and index changes from the statutory certification requirement for all rule changes in recognition that such rule changes are subject to the additional safeguard of being determined by the action of an independent party, for purposes not solely related to trading in derivatives contracts or to trading on the exchanges.

instrument by filing with the Commission: (i) the rules of the DCO that permit it to accept the contract or other instrument for clearing (including any rules establishing the terms and conditions of products that make them acceptable for clearing); and (ii) a certification that the clearing of the new contract or instrument (including any rules establishing the terms and conditions of products that make them acceptable for clearing) complies with the Act. By so certifying, the DCO will be certifying not only that it is in compliance with the core principles applicable to it, but that its rules permitting acceptance for clearing (including any rules establishing terms of the product to be accepted for clearing) comply with the Act. These filing and certification requirements, as proposed, do not apply when a DCO accepts a new product for clearing that is traded on a contract market or a registered DTF.[44]

2. Product Listing

CME objected to the requirement that trading facilities certify to the Commission compliance with the Act when relisting dormant contracts for trading. *See* proposed rule 40.2. CME argued that the proposed certification requirement for dormant contracts is a ''relic of the days of more intensive regulatory administration.'' CL 18 at 5. The Commission disagrees. Contracts become dormant only after five years from initial listing[45] and cash markets are likely to change during that period. Consequently, the product as originally certified may no longer be in compliance with the applicable core principles. The recertification requirement is in keeping with the Commission's oversight role.

3. Rule Submissions

Proposed rule 40.5 would have established procedures for the voluntary submission of rules for Commission review and approval.[46] CBT objected that this rule would result in a potentially longer review process than was provided for under the Commission's fast track review procedure prior to enactment of the CFMA. CL 7–2.

Proposed rule 40.5 provided for a 45-day review period of rules submitted for Commission approval, with the possibility that the Commission could extend the review period once, for another 45 days, which would have comported with the statutory review period of 90 days. On further reflection, the Commission has determined to retain the review periods of its pre-CFMA fast track procedure: one 45-day initial review period, with the possibility of one 30-day extension.[47]

When the Commission does not approve the rule of a registered entity submitted to it for voluntary approval, proposed rule 40.5(d) provided that the non-approval notice must briefly specify the nature of the issues raised and the specific provision of the Act or regulations, including the form or content requirement of rule 40.5, that the facility's rule would violate, appears to violate, or the violation of which could not be ascertained from the submission. Notice of the Commission's refusal to approve a registered entity's rule would have been presumptive evidence that the registered entity could not truthfully certify that the same, or substantially the same, proposed rule or rule amendment does did not violate the Act or rules thereunder. *See* proposed rule 40.5(e).

BOTCC argues that the presumption established by rule 40.5(e) is ill-advised, procedurally flawed, discourages rule submissions and should be withdrawn. CL 1–5. The Commission is not persuaded. The presumption established by rule 40.5(e) is not a conclusive, but rather, is a rebuttable presumption. If the registered entity were to certify such a rule following notice of non-approval, the burden of proceeding would rest with the Commission.[48] In any administrative proceeding brought by the Commission, the registered entity would have an opportunity to supplement the record with evidence rebutting the presumption. Moreover, as the proposed rule makes clear, nothing will prejudice a registered entity's right to resubmit a revised rule or to supplement the submission. Accordingly, the Commission does not believe that this presumption will discourage voluntary rule submissions.

Proposed rule 40.6 provides that the Commission may stay the effectiveness of a certified rule during the pendency of Commission proceedings for filing a false certification or to alter or amend the rule pursuant to section 8a(7) of the Act. CBT objected to the stay provision on the grounds that section 8a(7) does not reference a stay and that it is unnecessary and potentially detrimental for the Commission to have such authority. CL 7–3; *see also* CL 18 at 2–3. BOTCC, while expressing sympathy for the Commission's concern that an improperly adopted rule not be permitted to remain in effect pending the conclusion of the administrative proceeding, suggested that the Commission modify the rule to specify that any stay will not affect contracts and positions previously established in reliance on the disputed rule and that the Commission endeavor to delay the effectiveness of any such stay in order to give the registered entity and market users an opportunity to make appropriate arrangements. CL 1–6, note 4.

The Commission recognizes the potential market implications of a stay of a previously implemented rule or rule amendment. The Commission has not delegated this authority to its staff. The Commission intends to invoke its stay authority cautiously, and only in the rare instance when its use would be appropriate.

FIA requested confirmation that the Commission will solicit comment on rules submitted for voluntary approval when warranted. CL 11–6–7. The Commission confirms its intent to solicit public comment in such cases and further confirms its intent to solicit public comment in appropriate cases on

[44] BOTCC objected to including clearing organizations within the definition of ''contract market'' under proposed rule 40.1. BOTCC reasoned that this definition was unnecessary and confusing since the Act now separately regulates trading facilities and clearing organizations. CL 1–4. The Commission agrees and has deleted the proposed definition from the final rules.

[45] *See* proposed Commission rule 40.1, which defines ''dormant contract'' as any futures or option contract in which no trading has occurred for six months beginning five years after initial listing.

[46] Those procedures are also incorporated by reference in proposed rule 40.4, which implements the statutorily-mandated review and approval procedures for certain amendments to contracts involving enumerated agricultural commodities.

[47] As suggested by NYBOT and NY Bar, the Commission is modifying rule 40.6(a) by adding a parenthetical to make explicit that the self-certification requirement of rule 40.6 applies to all new rules or rule amendments of a contract market or DTF other than those rules or rule amendments that have been approved by the Commission under the voluntary approval procedures of rule 40.5. *See* CL 5–6 and 19–7. This does not preclude a contract market or DTF from voluntarily submitting a rule for Commission approval under rule 40.5 that it has already implemented by certification under rule 40.6.

[48] In such a proceeding, the Commission would be required to satisfy the applicable legal standard. In a proceeding to alter or supplement the rules of a registered entity, the Commission would be required to establish that such changes ''are necessary or appropriate for the protection of persons producing, handling, processing, or consuming any commodity traded for future delivery on such registered entity * * * or for the protection of traders or to insure fair dealing in commodities traded for future delivery on such registered entity.'' 7 U.S.C. 12a(7). In an administrative enforcement proceeding alleging a false certification, the Commission's findings of fact must be supported by ''the weight of the evidence.'' 7 U.S.C. 8(b).

interpretations issued or approved under section 5c(a) of the Act.[49]

4. Emergency Rule Submissions

CME commented that the proposed definition of emergency in proposed rule 40.1 is too broad and particularly objected to including within the definition ''any action taken by any governmental body, or any other board of trade, market or facility which may have a direct impact on trading on the trading facility.'' CME argued that this definition could require the ''declaration of an emergency if * * * the Federal Reserve changes the fed funds rate.'' CL 18–5. The proposed language is substantially identical to language included in the Commission's current definition,[50] and is consistent with the Act's definition of emergency.[51]

BOTCC, CME and NYMEX objected to the provisions of rule 40.6 that would require a contract market or registered DCO to file emergency rules at the time of implementation, if implementation is sooner than the next business day. CL 1–7–8; CL 10–4; CL 18–5. CME commented that this notification requirement ''more closely resembles micromanagement than oversight. It has the effect of requiring a DTEF to concern itself with an administrative procedure rather than concentrating on the emergency itself.'' CL 8–5

After considering these comments, the Commission has decided to modify rule 40.6 to require the contract market or DCO to file rules implemented pursuant to an emergency at the earliest possible time after implementation of the rule (but in no event later than 24 hours after implementation), if it is not practicable for the contract market or DCO to file the rule prior to implementation.[52]

D. Part 36—Exempt Markets

Part 36 applies to any board of trade or electronic trading facility eligible for exemption under sections 5d and 2(h)(3) through (5) of the Act, respectively.

Section 5d of the Act establishes the category of ''exempt board of trade.'' Commission rule 36.2 defines those commodities that are eligible to trade on an exempt board of trade to include commodities defined in section 1a(13) of the Act as ''excluded commodities,'' other than securities, and such other commodities as the Commission may define by rule, regulation or order. In addition, rule 36.2(b) provides the form and manner of the notification to the Commission provided for under section 5d of the Act.

Transactions by eligible commercial entities in exempt commodities traded on an electronic trading facility are exempt commercial markets under section 2(h)(3) of the Act.[53] Markets that satisfy the initial and ongoing requirements of sections 2(h)(3) through (5) of the Act as amended are excluded from the Act's other requirements. The rules implement the notification requirements of section 2(h)(5)(A) of the Act and the information requirements for exempt commercial markets consistent with section 2(h)(5)(B) of the Act.[54] Generally, the part 36 rules incorporate by reference the statutory conditions that pertain to these exemptions, including the statutory provisions relating to eligibility.

1. Exempt Boards of Trade

Several commenters suggested that the Commission expand the commodities eligible to be traded on exempt boards of trade (EBOT) trading under proposed rule 36.2. ISDA stated that it ''believes it is important that the Commission indicate its intention to act with dispatch in designating additional commodities that may be traded on an exempt board of trade.'' CL 3–4. SIA suggested that the Commission ''does not need to foreclose the determination that other commodities could satisfy the statutory standard for eligibility or to require in all cases that such a determination be made by the CFTC, where such a determination is not required by statute.'' CL 20–3. The Commission believes that the commodities defined as excluded under section 1a(13) of the Act clearly meet the statutory criteria to be traded on an EBOT. The Commission has not foreclosed the possibility of finding additional commodities eligible for trading on an EBOT at some future time by rule, regulation or order.

2. Exempt Commercial Markets

With respect to the eligibility of traders to participate in exempt commercial markets, Energy Group ''suggest[ed] that the Commission consider clarifying the definition of principal for the purposes of principal-to-principal transactions to include eligible commercial entities entering into transactions on behalf of other eligible commercial entities.'' CL 4–2. As noted above, the Commission's proposed rules relating to exempt commercial markets rely directly upon the statutory definitions and conditions relating to the section 2(h)(3) exemption. Any interpretation by the Commission of the definition of ''principal'' relating to eligible commercial entities necessarily would include consideration of the use and meaning of that term as it relates to other statutory exclusions or exemptions, and is beyond the scope of this rulemaking.

With respect to the reporting requirements set forth in part 36, *see* note 55 *supra* and accompanying text, @Markets expressed the view that ''regular and periodic'' reports were beyond the scope of the Commission's authority under section 2(h)(5)(B) of the Act and Energy Group suggested that ''the focus on meeting ''large trader'' requirements is unnecessary for the Commission to fulfill its responsibilities under the CFMA.'' CL 4–2. The Commission disagrees. Section 2(h)(5)(B) of the Act requires that an exempt commercial market provide the Commission with electronic access to the market. The access requirement provides the Commission with information on a routine, on-going basis, thereby serving many of the functions that large-trader reports serve on the regulated markets. Using this access, the Commission is able to surveil transactions on the market in order to enforce its anti-manipulation authority. The alternative to providing electronic access set forth in rule 36.3(b) is intended to offer exempt markets a substitute, but generally equivalent, means of complying with the statutory electronic access requirement.

Two commenters raised issues relating to proposed rule 36.3(c)(3),

[49] BOTCC commented that the procedures governing amendments to the terms and conditions of contracts involving enumerated agricultural commodities, consistent with the Act, should apply only when the contract is traded on a designated contract market, and not when traded on a registered DTF pursuant to section 5a(g) of the Act. CL 1–5. The Commission agrees and has amended rule 40.4 accordingly.

[50] *See* 17 CFR 1.41(a)(4)(iv)(2001).

[51] Section 8a(9) of the Act vests the Commission with emergency authority. The term emergency is defined to include ''in addition to threatened or actual market manipulations and corners, any act of the United States or a foreign government affecting a commodity or any other major market disturbance which prevents the market from accurately reflecting the forces of supply and demand for such commodity.''

[52] This is consistent with the approach taken in the current rules regarding the timing of notification of rules implemented pursuant to an emergency. *See* 17 C.F.R. 1.41(f)(2)(i).

[53] *See,* note 9 *supra.*

[54] As proposed by rule 36.3(b), if an exempt commercial market chooses not to satisfy its reporting requirements by providing the Commission with electronic access to transactions conducted on the facility, it may do so by an alternative means, the form and content of which the Commission may determine is acceptable, pursuant to a petition to the Commission for such a determination. Such an alternative should provide the Commission with information comparable in coverage and frequency to that provided to the Commission by its large-trader reporting system.

under which a facility must require that each participant agree to comply with all applicable law and must have a reasonable basis for believing that its participants are eligible. BOTCC suggested that the Commission clarify that the provision requiring each participant ''to agree to comply with all applicable law is intended to be limited to applicable provisions of the Act and Commission regulations.'' CL 1–4; *see also* CL 4–2 (Energy Group). That is indeed the intended meaning of the rule.

Finally, @Markets requested that the Commission ''confirm that an exempt commercial market will be deemed to be a ''board of trade'' for purposes of the confidentiality provisions of section 8(a) of the Act and the relevant provisions of the Freedom of Information Act.'' CL 6–4. Unlike contract markets and DTFs, which are specifically referred to as ''boards of trade'' in the Act, exempt commercial markets are not specifically referred to by the Act as ''boards of trade.'' *Compare* sections 5(a) and 5a(a) of the Act *with* section 2(h)(5) of the Act. Nevertheless, section 8(a) of the Act generally prohibits the Commission from publishing ''data and information that would separately disclose the business transactions or market positions of any person.'' ''Person'' under section 1(a)(16) of the Act includes individuals, associations, partnerships, corporations and trusts, and would thereby apply to an exempt commercial market and to those trading thereon.

3. Common Provisions

Part 36 provides that both exempt boards of trade and exempt commercial markets be required to disseminate publicly their trading volume, opening and closing price ranges, open interest and other trading data, to the extent appropriate to that market upon a Commission finding that the facility serves as a significant source for the discovery of prices in the cash market for the underlying commodity. Rules 36.2(c)(2) and 36.3(c)(2) provide that the Commission will make such a determination after notice and an opportunity for hearing through submission of written data, views and arguments.

A number of commenters suggested modifications to the rule. BOTCC noted that price information is an important source of revenue for exchanges and suggested that the Commission revisit the public dissemination requirement at a future time after ''a fuller opportunity to evaluate the appropriate balance of public interests entailed by such requirement.'' CL 1–3. @Markets noted that although ''neither the Act nor the proposed rules define the standards that the Commission is to employ in determining that a market performs a significant price discovery function, [it] would expect to have the opportunity to comment on appropriate standards prior to or in connection with any such determination by the Commission under this section of the Act.'' CL 6–2. Others commented that oral hearings should not be precluded in appropriate cases. CL 5–2, CL 19–4.

The Commission agrees with the above comments. Although the Commission has provided that its determination will be made through notice and an opportunity for hearing through submission of written data, views and comments, it is not precluded from convening a public meeting to receive oral comment and argument in appropriate cases. The Commission may determine *sua sponte,* or in response to a request by the affected trading facility, or any interested member of the public, that a public meeting to receive oral statements and arguments is in the public interest and will assist it in its consideration of the relevant issues. As part of its inquiry, the Commission would set forth the standards that it would use in making its determination. The facility, and other interested members of the public, would have an opportunity to challenge those standards and to raise any other objections or defenses to the issuance of an Order, including any possible adverse impact on a facility's property rights that may stem from the proposed order. The Commission is of the view that these issues are best addressed in the context of a fully-developed administrative record, rather than in the context of this generalized rulemaking. Accordingly, the Commission is adopting the final rules on procedures relating to price discovery determinations as proposed.

The Commission invited comment on whether exempt boards of trade and exempt commercial markets should be required affirmatively to disclose to traders that the facility and trading on the facility are not regulated or approved by the Commission. 66 FR at 14266. Commenters responding to this question generally opposed requiring facilities to affirmatively make such disclosures. *But see* CL 10–5 (NYMEX); CL 12–2 (SUA). For example, Energy Group suggested that

> [a]n exempt commercial market is open only to sophisticated market participants who are familiar with distinctions among the different facilities. Such participants would have no reason to believe such a facility is regulated * * *. A representation affirming that the facility is not regulated may cause confusion.

CL4–2. SIA and @Markets concurred with this view, noting respectively that ''[i]n light of the institutional character of these markets * * * such disclosure is not necessary,'' and that ''the participants in these markets * * * can be expected to make appropriate inquiries regarding a market before applying for trading privileges on the facility.'' CL 20–3; CL 6–4.

The Commission agrees that eligible contract participants and eligible commercial entities can be expected to make appropriate inquiries regarding whether a market is regulated and is not requiring exempt boards of trade or exempt commercial markets affirmatively to disclose that they are not regulated or approved by the Commission.

E. Miscellaneous

1. Anti-Fraud

The Commission additionally proposed an anti-fraud provision, proposed rule 1.1, pursuant to its authority in sections 3 and 8a(5) of the Act. This proposed anti-fraud rule would apply to retail foreign currency agreements, contracts and transactions described in section 2(c)(1) of the Act.

A number of the commenters particularly supported this proposed rule. SUA noted that it was the clear intent of Congress that the Commission ''retain broad powers to protect against fraud and manipulation'' (CL 12 at 1). NYMEX ''strongly support[ed] the proposed new rule.'' (CL 10 at 4). CBT commented that the rule ''addresses a regulatory gap with regard to * * * unregulated entities.'' (CL 7 at 9). *See also* CL 11 at 6. NASAA, ''welcome[d] the clarification of the Commission's antifraud jurisdiction.'' CL 2 at 1.

ISDA, however, suggested that the Commission expand the exclusion from the rule to include financial institutions, insurance companies, financial holding companies and investment bank holding companies.[55] Such entities need not be excluded from operation of the rule because they are outside of its intended scope in the first instance.[56] Accordingly, the Commission is adopting the rule as proposed.[57]

[55] The rule excludes broker-dealers, FCMs and their respective affiliates.

[56] Rule 1.1 on its face applies only to ''the extent that the Commission exercises jurisdiction over such accounts, agreements, or transactions as provided in section 2(c)(2)(B).''

[57] Separate from proposed rule 1.1, a number of commenters offered a range of opinion in response to the request for comment by Commissioner Thomas J. Erickson on the advisability of

Continued

2. Delegation of Functions

NFA asked the Commission to clarify a contract market's and DTF's ability to delegate functions under the core principles, noting that:

> the CFMA specifically allows contract markets and [DTFs] to comply with any of the core principles through delegation of functions to a registered futures association or another registered entity * * *. The Commission's current proposal, however, does not specifically authorize a [DTF] to delegate these functions (although NFA believes that the language is sufficiently broad to be interpreted to permit this delegation.)

CL 16–1.

Section 5c(b) of the Act specifically provides that both contract markets and DTFs may comply with any applicable core principle through *delegation* of any relevant function to a registered futures association or another registered entity. As NFA correctly notes, the rules as proposed are ''sufficiently broad to be interpreted to permit this delegation.'' *Id.*

NFA further suggests that the Commission, by rule, limit entities acceptable ''for *''outsourcing''* of functions to registered futures associations and registered entities because the statute so provides and because ''Congress recognized that the Commission must have some authority over any entity carrying out these functions.'' *Id.* Section 5c(b) of the Act, however, limits only *''delegations''* of functions to registered futures associations and to registered entities; it does not restrict *''outsourcing''* of specified activities on a contract basis.

The Commission has long-recognized the ability of contract markets to meet their self-regulatory obligations by using persons under contract to perform specified duties. The Commission has conditioned the use of outside contractors to perform duties in connection with self-regulatory functions upon the contract market ''maintaining a sufficient degree of control over the persons under contract,'' and the person under contract having ''no conflict of interest.'' The Commission has further provided that, when using contractors to fulfill a self-regulatory function, it is the exchange's responsibility to ensure that its obligations under the Act are met. Comm. Fut. L. Rep. (CCH) ¶ 6430, CFTC, (May 13, 1975.) Accordingly, contract markets have contracted for the performance of various services related to their operations and self-regulatory responsibilities, including compliance with various core principles. For example, contract markets or DTFs reasonably may be expected to outsource to various contractors functions relating to operating their trading platforms or to disseminating information required to be made public.[58]

In contrast to such contracting arrangements, a delegation confers upon another the authority to act in the delegating entity's name. The distinction between delegation of authority and contracting for services is particularly well-illustrated in matters related to member discipline and market surveillance. A market that delegates these functions empowers the delegatee to take appropriate remedial actions, including the sanctioning of members or market participants for rule violations. In contrast, a market may contract with an entity to conduct trading surveillance and to investigate the facts surrounding alleged rule infractions. Unlike a delegatee, a contractor would not have the authority to decide on behalf of the delegating entity whether an infraction had occurred or to impose remedial sanctions. These decisional functions can be exercised only by delegation of that authority to registered entities or a registered futures association, as Congress has provided.

Further, although section 5c(b)(2) of the Act provides that the Commission would have oversight authority over a delegatee because it is a registered entity, the contract market or DTF that delegates responsibilities under the Act also ''shall remain responsible for carrying out the function.'' Therefore, regardless of whether a registered entity has delegated functions or contracted for services, the entity must assure itself that the delegated functions or contracted services will enable it to remain in compliance with the Act's requirements. Moreover, the registered entity must have a sufficient degree of control over the persons under contract because it remains the registered entity's ''responsibility to ensure that its obligations under the Act are met.'' *Id.*

3. Arbitration

Rule 166.5 governs the use of pre-dispute arbitration agreements. Under subsection (g) of the proposed rule, an eligible contract participant would have retained the right to bring a private right of action under section 22 of the Act, but could have been required, in accordance with an amendment to section 14(g) of the Act,[59] to waive the right to seek reparations.

Several commenters questioned the need to retain the voluntariness requirement with respect to section 22 of the Act. SIA reasoned that, ''(a)lthough the CFMA may not directly address the issue,'' the policy behind the CFMA's provision permitting FCMs to require eligible contract participant customers to waive their right to reparations, ''would seem equally applicable in the case of pre-dispute arbitration agreements generally.'' CL 20–4. NFA also ''encourage[d] the Commission to provide more flexibility regarding pre-dispute arbitration agreements[,]'' and reasoned that any restrictions on such agreements are unnecessary with respect to eligible contract participants because ''[t]hese customers are capable of negotiating favorable terms in their agreements with intermediaries.'' CL 16–2. Others opined that limiting the use of pre-dispute arbitration agreements for any customer contravenes prevailing law and policy regarding dispute resolution procedures. CL 11 at 2–6, CL 18 at 5–6.

SIA, FIA, and NYMEX, advocated increased harmonization of the Commission's rules governing pre-dispute arbitration agreements with those governing pre-dispute arbitration agreements in the securities industry, particularly in light of the availability of security futures products. CL 10 at 4–5, CL 11 at 5–6, CL 20 at 4; *see also* CL 2–9 and CL 19–7. At a minimum, FIA suggested, the Commission should exclude claims relating to security futures products from the rule's applicability, particularly with respect to notice-registered FCMs. CL 11 at 5–6. FIA further suggested that the Commission's rules permit FCMs to use the disclosure statement required on the

promulgating a broader anti-fraud rule. 66 FR at 14288. SUA supported a broader anti-fraud rule without qualification. CL 12 at 1. SIA did not object ''in concept'' to clarification by the Commission of its anti-fraud authority with respect to principal-to-principal transactions. CL 20 at 4. ISDA, however, warned that the Commission should proceed with caution in this area to avoid creating any uncertainty with respect to the scope of its jurisdiction. CL 3 at 5. Finally, FIA expressed doubt whether an anti-fraud rule of more general applicability would appreciably enhance the Commission's authority to deter misconduct by persons subject to its jurisdiction, or the public's ability to recover damages as a result of such misconduct. CL 11 at 6.

[58] Specifically, for example, the Merchants Exchange of St. Louis contracted with a technology company to operate its matching engine. A criterion for designation is that the contract market ''establish and enforce rules defining * * * the operation of any electronic matching platform; and demonstrate that the trade execution facility operates in accordance with the rules.'' *See* section 5(b)(4) of the Act. Under Core Principle (2), the contract market must monitor and enforce compliance with those rules. Consistent with long-standing Commission interpretation, it is reasonable for a contract market or a DTF to outsource these functions, in whole or in part, to a technology contractor.

[59] *See* CFMA, section 118.

securities side of a dually registered broker-dealer/FCM.[60]

In the final rules, the Commission has decided to remove any limitation on the FCM's use of account opening pre-dispute arbitration agreements for eligible contract participants. As several commenters noted, this is consistent with the CFMA, which permits FCMs to require that eligible contract participant customers waive their right to reparations as a condition of opening an account. It also should facilitate the ability of an FCM that is also a broker-dealer to use a single agreement with those customers.[61] With regard to customers who are not eligible contract participants, the Commission is retaining the voluntariness requirement in its current form. However, it will further consider the issue as part of its study on the regulation of intermediaries and as part of its rules implementing the provisions of the Act relating to security futures products.

4. Contract Approval Fees

Prior to the CFMA's amendments to the Act, boards of trade were required to be designated as a contract market in each commodity that they listed for trading. The CFMA amended the Act, in part, by providing that the facility must be designated as a ''contract market'' or registered as a DTF, that the contract market or DTF may list new products for trading by certification, and that they may voluntarily request Commission approval of those products. The Commission proposed to amend current 17 CFR part 5, Appendix B, to clarify that applications for voluntary product approval must be accompanied by a service fee.[62] No comments were received and the Commission is adopting the provision as proposed. The Commission, in a separate notice of final rulemaking published elsewhere in this edition of the **Federal Register**, is revising the fees charged for this service.

III. Section 4(c) Findings

Some of the rules contained in this **Federal Register** notice are being adopted under section 4(c) of the Act, which grants the Commission broad exemptive authority. Section 4(c) of the Act provides that, in order to promote responsible economic or financial innovation and fair competition, the Commission may by rule, regulation or order exempt any class of agreements, contracts or transactions, either unconditionally or on stated terms or conditions, from any of the requirements of any provision of the Act (except certain provisions governing a group or index of securities and security futures products). As relevant here, when granting an exemption pursuant to section 4(c), the Commission must find that the exemption would be consistent with the public interest.

When it proposed these rules, the Commission made a preliminary determination that the exemptions contained therein would be consistent with the public interest because they provide registered entities with greater procedural flexibility than is contained in the Act. For instance, pursuant to rule 38.4, contract markets may request approval of their contracts following certification of those contracts, notwithstanding the Act's limitation of the Commission's approval authority to ''prior'' approval. Furthermore, the rules contain a less burdensome certification procedure than that provided for in the Act. The Commission invited public comment on its preliminary determination that this exercise of its exemptive authority would be consistent with the public interest. As noted above, the commenters broadly supported these exemptive rules. Accordingly, the Commission finds under section 4(c) of the Act that the exemptions are consistent with the public interest.

IV. Cost-Benefit Analysis

Section 15 of the Act, as amended by section 119 of the CFMA, requires the Commission, before issuing a new regulation under the Act, to consider the costs and benefits of its action. The Commission understands that, by its terms, section 15 does not require the Commission to quantify the costs and benefits of a new regulation or to determine whether the benefits of the proposed regulation outweigh its costs. Rather, section 15 simply requires the Commission to ''consider the costs and benefits'' of its action.

Section 15 further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. Accordingly, the Commission could in its discretion give greater weight to any one of the five enumerated areas of concern and could in its discretion determine that, notwithstanding its costs, a particular rule was necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

The Commission's proposal contained an analysis of its consideration of these costs and benefits and solicited public comment thereon. 66 FR at 14267. The Commission specifically invited commenters to submit any data that they had quantifying the costs and benefits of the proposed rules with their comment letters. *Id.* The Commission has considered all the comment letters received, some of which contained narrative discussion of the costs and benefits of specific provisions of this rule package, but none of which set forth any data that quantified such costs and benefits.

The Commission has considered the costs and benefits of this rule package in light of the specific areas of concern identified in section 15. The Commission has endeavored in this rule package to impose the minimum requirements necessary to enable the Commission to perform its oversight functions, to carry out its mandate of assuring the continued existence of competitive and efficient markets and to protect the public interest in markets free of fraud and abuse. After considering their costs and benefits, the Commission has decided to adopt these rules as discussed above.

V. Implementation Issues; No-Action

In light of Congress's intent to implement the changes of the CFMA without delay, the Commission determined when it proposed these rules that it would not bring any enforcement action against any person who complied with the proposed rules during the transition period between the

[60] FIA also specifically recommended that the Commission decline to adopt proposed rule 166.5, while removing part 180. CL 11 at 6. NFA commented that the Commission should provide that arbitration agreements bind both the customer and the intermediary equally. CL 16 at 2.

[61] A number of the above comments relating to greater harmonization of account opening disclosures to customers of dually registered FCMs/broker-dealers are outside of the scope of this rulemaking. Nevertheless, the Commission agrees that these issues are important and should be addressed, including the feasibility of using the disclosure currently mandated for securities customers for commodity customers as well. *See, e.g.,* Rule 3110(f) of the National Association of Securities Dealers, Inc.;. *see also* 64 FR 66681 (Nov. 29, 1999) (Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Amendments to NASD Rule 3110(f) Governing Use of Predispute Arbitration Agreements with Customers).

[62] The Commission also proposed to redesignate the Appendix as Appendix B to Part 40. Previously, in November 1999, the Commission proposed to eliminate fees for contract market designation applications in connection with its adoption of Rule 5.3 that allowed exchanges to list new contracts by certification (64 FR 66432, Nov. 26, 1999). The Commission deferred action while it considered additional regulatory reform.

effective date of the amendments to the Act (generally, December 21, 2000) and the adoption of final implementing regulations. 66 FR at 14268. At that time, the Commission also advised persons relying on that no-action position that they would be required to bring their conduct into compliance with the final rules to the extent that the final rules differ from the proposed rules. *Id.*

The rules being adopted today will become effective October 9, 2001. The Commission will not bring any enforcement action against any person who complies with the final rules during the period between their adoption and effective date.

VI. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires federal agencies, in promulgating rules, to consider the impact of those rules on small entities. The rules adopted herein would affect contract markets and other trading facilities. The Commission has previously established certain definitions of ''small entities'' to be used by the Commission in evaluating the impact of its rules on small entities in accordance with the RFA.[63] In its previous determinations, the Commission has concluded that contract markets are not small entities for the purpose of the RFA.[64] The Commission proposed to determine that the other trading facilities covered by these rules, for reasons similar to those applicable to contract markets, are not small entities for purposes of the RFA. 66 FR at 14268. In its proposing release, the Commission also observed that the rules authorize these trading facilities to operate in a less regulated environment than may currently be the case and that, consequently, the rules should not result in, or should result in only a *de minimis*, increase in the regulatory requirements that apply to contract markets and other trading facilities. The Commission invited the public to comment on its proposed determination that the new categories of trading facilities covered by these rules would not be small entities for purposes of the RFA and on its finding of small entity impact. The Commission received no comments on its proposed determination or on its proposed finding.

The Commission hereby determines that the new categories of trading facilities covered by these rules (derivatives transaction execution facilities, exempt boards of trade and exempt commercial markets) are not small entities for purposes of the RFA. Furthermore, the Commission does not believe that these rules, as adopted, will have a significant economic impact on a substantial number of small entities. Therefore, the Acting Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the rule amendments will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act of 1995

This rulemaking contains information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Commission has submitted a copy of these rules to the Office of Management and Budget for its review. See 44 U.S.C. 3507(d)(1). No comments were received in response to the Commission's invitation in the notice of proposed rulemaking to comment on any potential paperwork burden associated with these regulations. See 44 U.S.C. 3507(d)(2).

The final rules contain several disclosure requirements. Exempt commercial markets may not represent that they are regulated (rule 36(c)). In addition, DTFs and contract markets must disclose information related to prices, bids and offers and certain trading information (part 37, Appendix B, Core Principles 4 and 5; part 38, Appendix B, Core Principles 7, 8 and 10.)

The final rules also contain several reporting requirements. Exempt boards of trade and exempt commercial markets must notify the Commission that they are engaging in business (rules 36.2(b) and 36.3(a)). Contract markets and DTFs must file applications for designation and registration, respectively, and must certify that certain rules are consistent with the Act (rules 37.5, 37.7, 38.3, 38.4, 40.2 and 40.7).

The final rules also require the collection of certain information from exempt boards of trade, exempt commercial markets, contract markets and DTFs. The Commission may not conduct or sponsor, and a person is not required to respond to an information collection unless it displays a currently valid OMB control number. The Commission has requested a control number for these information collections from OMB.

List of Subjects

17 CFR Part 1

Commodity futures, Contract markets, Designation application, Reporting and recordkeeping requirements.

17 CFR Part 5

Commodity futures, Contract markets, Designation application, Reporting and recordkeeping requirements.

17 CFR Part 15

Commodity futures, Contract markets, Reporting and recordkeeping requirements.

17 CFR Part 36

Commodity futures, Commodity Futures Trading Commission.

17 CFR Part 37

Commodity futures, Commodity Futures Trading Commission.

17 CFR Part 38

Commodity futures, Commodity Futures Trading Commission.

17 CFR Part 40

Commodity futures, Contract markets, Designation application, Reporting and recordkeeping requirements.

17 CFR Part 41

Security Futures, Commodity Futures Trading Commission.

17 CFR Part 100

Commodity futures, Commodity Futures Trading Commission.

17 CFR Part 166

Brokers, Commodity futures, Consumer protection, Reporting and recordkeeping requirements.

17 CFR Part 170

Commodity futures, Reporting and recordkeeping requirements.

17 CFR Part 180

Claims, Commodity futures, Consumer protection, Reporting and recordkeeping requirements.

In consideration of the foregoing, and pursuant to the authority contained in the Act, as amended by the Commodity Futures Modernization Act of 2000, Appendix E of Pub. L. 106–554, 114 Stat. 2763 (2000), and, in particular, sections 1a, 2, 3, 4, 4c, 4i, 5, 5a, 5b, 5c, 5d, 6 and 8a thereof, the Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations as follows:

[63] 47 FR 18618–21 (Apr. 30, 1982).

[64] 47 FR 18618, 18619 (discussing contract markets).

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

Authority: 7 U.S.C. 1a, 2, 5, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23, and 24, as amended by the Commodity Futures Modernization Act of 2000, Appendix E of Pub. L. 106–554, 114 Stat. 2763 (2000).

2. Section 1.1 is revised to read follows:

§ 1.1 Fraud in or in connection with transactions in foreign currency subject to the Commodity Exchange Act.

(a) *Scope.* The provisions of this section shall be applicable to accounts, agreements, contracts, or transactions described in section 2(c)(1) of the Act, to the extent that the Commission exercises jurisdiction over such accounts, agreements, contracts and transactions as provided in section 2(c)(2)(B) of the Act (except that this section shall not be applicable to persons described in section 2(c)(2)(B)(ii)(II) or 2(c)(2)(B)(ii)(III) of the Act).

(b) *Fraudulent conduct prohibited.* It shall be unlawful for any person, directly or indirectly, in or in connection with any account, agreement, contract or transaction that is subject to paragraph (a) of this section:

(1) To cheat or defraud or attempt to cheat or defraud any person;

(2) Willfully to make or cause to be made to any person any false report or statement or cause to be entered for any person any false record; or

(3) Willfully to deceive or attempt to deceive any person by any means whatsoever.

3. Section 1.3 is amended by revising the undesignated introductory paragraph to read as follows:

§ 1.3 Definitions.

Words used in the singular form in the rules and regulations in this chapter shall be deemed to import the plural and vice versa, as the context may require. The following terms, as used in the Commodity Exchange Act, or in the rules and regulations in this chapter, shall have the meanings hereby assigned to them, unless the context otherwise requires:

* * * * *

4. Section 1.37 is amended by adding paragraphs (c) and (d) to read as follows:

§ 1.37 Customer's or option customer's name, address, and occupation recorded; record of guarantor or controller of account.

* * * * *

(c) Each designated contract market shall keep a record in permanent form, which shall show the true name, address, and principal occupation or business of any foreign trader executing transactions on the facility or exchange. In addition, upon request, a designated contract market shall provide to the Commission information regarding the name of any person guaranteeing such transactions or exercising any control over the trading of such foreign trader.

(d) Paragraph (c) of this section shall not apply to a designated contract market on which transactions in futures or option contracts of foreign traders are executed through, or the resulting transactions are maintained in, accounts carried by a registered futures commission merchant or introduced by a registered introducing broker subject to the provisions of paragraph (a) of this section.

§§ 1.41, 1.41b, 1.43, 1.45, 1.50, and 1.51 [Removed]

5. Sections 1.41, 1.41b, 1.43, 1.45, 1.50 and 1.51 are removed and reserved.

PART 15—REPORTS—GENERAL PROVISIONS

6. The authority citation for Part 15 is revised to read as follows:

Authority: 7 U.S.C. 2, 5, 6(c), 6a, 6c(a)–(d), 6f, 6g, 6i, 6k, 6m, 6n, 7, 9, 12a, 19 and 21, as amended by the Commodity Futures Modernization Act of 2000, Appendix E of Pub. L. 106–554, 114 Stat. 2763 (2000).

7. Section 15.05 is amended by revising the heading and adding paragraphs (e) through (h) to read as follows:

§ 15.05 Designation of agent for foreign brokers, customers of a foreign broker and foreign traders.

* * * * *

(e) Any designated contract market or registered derivatives transaction execution facility that permits a foreign broker to intermediate contracts, agreements or transactions, or permits a foreign trader to effect contracts, agreements or transactions on the facility or exchange, shall be deemed to be the agent of the foreign broker and any of its customers for whom the transactions were executed, or the foreign trader, for purposes of accepting delivery and service of any communication issued by or on behalf of the Commission to the foreign broker, any of its customers or the foreign trader with respect to any contracts, agreements or transactions executed by the foreign broker or the foreign trader on the designated contract market or registered derivatives transaction execution facility. Service or delivery of any communication issued by or on behalf of the Commission to a designated contract market or registered derivatives transaction execution facility shall constitute valid and effective service upon the foreign broker, any of its customers, or the foreign trader. A designated contract market or registered derivatives transaction execution facility which has been served with, or to which there has been delivered, a communication issued by or on behalf of the Commission to a foreign broker, any of its customers, or a foreign trader shall transmit the communication promptly and in a manner which is reasonable under the circumstances, or in a manner specified by the Commission in the communication, to the foreign broker, any of its customers or the foreign trader.

(f) It shall be unlawful for any designated contract market or registered derivatives transaction execution facility to permit a foreign broker, any of its customers or a foreign trader to effect contracts, agreements or transactions on the facility unless the designated contract market or registered derivatives transaction execution facility prior thereto informs the foreign broker, any of its customers or the foreign trader, in any reasonable manner the facility deems to be appropriate, of the requirements of this section.

(g) The requirements of paragraphs (e) and (f) of this section shall not apply to any contracts, transactions or agreements traded on any designated contract market or registered derivatives transaction execution facility if the foreign broker, any of its customers or the foreign trader has duly executed and maintains in effect a written agency agreement in compliance with this paragraph with a person domiciled in the United States and has provided a copy of the agreement to the designated contract market or registered derivatives transaction execution facility prior to effecting any contract, agreement or transaction on the facility. This agreement must authorize the person domiciled in the United States to serve as the agent of the foreign broker, any of its customers or the foreign trader for purposes of accepting delivery and service of all communications issued by or on behalf of the Commission to the foreign broker, any of its customers or the foreign trader and must provide an address in the United States where the

agent will accept delivery and service of communications from the Commission. This agreement must be filed with the Commission by the designated contract market or registered derivatives transaction execution facility prior to permitting the foreign broker, any of its customers or the foreign trader to effect any transactions in futures or option contracts. Unless otherwise specified by the Commission, the agreements required to be filed with the Commission shall be filed with the Secretary of the Commission at Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. A foreign broker, any of its customers or a foreign trader shall notify the Commission immediately if the written agency agreement is terminated, revoked, or is otherwise no longer in effect. If the designated contract market or registered derivatives transaction execution facility knows or should know that the agreement has expired, been terminated, or is no longer in effect, the designated contract market or registered derivatives transaction execution facility shall notify the Secretary of the Commission immediately. If the written agency agreement expires, terminates, or is not in effect, the designated contract market or registered derivatives transaction execution facility and the foreign broker, any of its customers or the foreign trader are subject to the provisions of paragraphs (e) and (f) of this section.

(h) The provisions of paragraphs (e), (f) and (g) of this section shall not apply to a designated contract market or registered derivatives transaction execution facility on which all transactions of foreign brokers, their customers or foreign traders in futures or option contracts, or other instruments subject to the Act pursuant to section 5a(g) of the Act, are executed through, or the resulting transactions are maintained in, accounts carried by a registered futures commission merchant or introduced by a registered introducing broker subject to the provisions of paragraphs (a), (b), (c) and (d) of this section.

8. Part 36 is revised to read as follows:

PART 36—EXEMPT MARKETS

Sec.

36.1 Scope.
36.2 Exempt boards of trade.
36.3 Exempt commercial markets.

Authority: 7 U.S.C. 2, 5, 6, 6c, and 12a, as amended by the Commodity Futures Modernization Act of 2000, Appendix E of Pub. L. 106–554, 114 Stat. 2763 (2000).

§ 36.1 Scope.

The provisions of this part apply to any board of trade or electronic trading facility eligible for exemption under sections 5d and 2(h)(3) through (5) of the Act, respectively.

§ 36.2 Exempt boards of trade.

(a) *Eligible commodities.* Commodities eligible under section 5d(b)(1) of the Act to be traded by an exempt board of trade are:

(1) Commodities having—

(i) A nearly inexhaustible deliverable supply;

(ii) A deliverable supply that is sufficiently large, and a cash market sufficiently liquid, to render any contract traded on the commodity highly unlikely to be susceptible to the threat of manipulation; or

(iii)No cash market.

(2) The commodities that meet the criteria of paragraph (a)(1) of this section are:

(i) The commodities defined in section 1a(13) of the Act as ''excluded commodities'' (other than a security, including any group or index thereof or any interest in, or based on the value of, any security or group or index of securities); and

(ii) Such other commodity or commodities as the Commission may determine by rule, regulation or order.

(b) *Notification.* Boards of trade operating under section 5d of the Act as exempt boards of trade shall so notify the Commission. This notification shall be filed with the Secretary of the Commission at its Washington, DC headquarters, in either electronic or hard copy form, shall be labeled as ''Notification of Operation as Exempt Board of Trade,'' and shall include:

(1) The name and address of the exempt board of trade; and

(2) The name and telephone number of a contact person.

(c) *Additional requirements.* (1) A board of trade notifying the Commission that it meets the criteria of section 5d of the Act and elects to operate as an exempt board of trade shall not represent to any person that it is registered with, designated, recognized, licensed or approved by the Commission.

(2) If the Commission finds by order, after notice and an opportunity for a hearing through submission of written data, views and arguments, that the facility serves as a significant source for the discovery of prices in the cash market for the underlying commodity, the facility must on a daily basis disseminate publicly trading volume, opening and closing price ranges, open interest and other trading data to the extent appropriate to that market with respect to transactions executed in reliance on the exemption as specified in the order.

§ 36.3 Exempt commercial markets.

(a) *Notification.* An electronic trading facility relying upon the exemption in section 2(h)(3) of the Act shall notify the Commission of its intention to do so. This notification, and subsequent notification of any material changes in the information initially provided, shall be filed with the Secretary of the Commission at its Washington, DC headquarters, in either electronic or hard copy form, shall be labeled as ''Notification of Operation as Exempt Commercial Market,'' and shall include the information and certifications specified in section 2(h)(5)(A) of the Act.

(b) *Required information.* (1) A facility operating in reliance on the exemption in section 2(h)(3) of the Act, initially and on an on-going basis, must:

(i) Provide the Commission with access to the facility's trading protocols and electronic access to transactions conducted on the facility in reliance on such exemption; or

(ii) Attach its initial trading protocols and any amendments thereto in hard copy form to the notification required in paragraph (a) of this section and provide in a form and manner acceptable to the Commission, as determined by the Commission in response to a petition by the exempt market relying upon the exemption in section 2(h)(3) of the Act, information regarding transactions by large traders on the facility.

(2) *Special calls.* (i) All information required upon special call of the Commission under section 2(h)(5)(B)(iii) of the Act shall be prepared in the form and manner and in accordance with the instructions, and shall be transmitted at the time and to the office of the Commission, as may be specified in the call.

(ii) The Commission hereby delegates, until the Commission orders otherwise, the authority to make special calls as set forth in section 2(h)(5)(B)(iii) of the Act to the Director of the Division of Trading and Markets and to the Director of Economic Analysis to be exercised by either Director or by such other employee or employees as the Director may designate. The directors may submit to the Commission for its consideration any matter that has been delegated in this paragraph. Nothing in this paragraph prohibits the Commission, at its election, from exercising the authority delegated in this paragraph.

(3) *Subpoenas to foreign persons.* A foreign person whose access to a trading facility is limited or denied at the direction of the Commission based on the Commission's belief that the foreign person has failed timely to comply with a subpoena as provided under section 2(h)(5)(C)(ii) of the Act shall have an opportunity for a prompt hearing under the procedures provided in §§ 21.03(g) and (h) of this chapter.

(c) *Additional requirements.* (1) An electronic trading facility relying upon the exemption in section 2(h)(3) of the Act shall not represent to any person that it is registered with, designated, recognized, licensed or approved by the Commission.

(2) If the Commission finds by order, after notice and an opportunity for a hearing through submission of written data, views and arguments, that the facility performs a significant price discovery function for transactions in the cash market for the underlying commodity, the facility must disseminate publicly price, trading volume and other trading data to the extent appropriate with respect to transactions executed in reliance on the exemption as specified in the order.

(3) The facility must represent in the notification provided under paragraph (a) of this section that it requires, and require, that each participant agree to comply with all applicable law and the facility must have a reasonable basis for believing that authorized participants are ''eligible commercial entities'' as defined in section 1a(11) of the Act.

9. Part 37 is added to read as follows:

PART 37—DERIVATIVES TRANSACTION EXECUTION FACILITIES

Sec.

37.1 Scope and definition.
37.2 Exemption.
37.3 Requirements for underlying commodities.
37.4 Election to trade excluded and exempt commodities.
37.5 Procedures for registration.
37.6 Compliance with core principles.
37.7 Additional requirements.
37.8 Information relating to transactions on derivative transaction execution facilities.
37.9 Enforceability.

Appendix A to Part 37—Application Guidance

Appendix B to Part 37—Guidance on Compliance with Core Principles

Authority: 7 U.S.C. 2, 5, 6, 6c, 6(c), 7a and 12a, as amended by the Commodity Futures Modernization Act of 2000, Appendix E of Pub. L. 106–554, 114 Stat. 2763 (2000).

§ 37.1 Scope and definition.

(a) *Scope.* The provisions of this part apply to any board of trade or trading facility operating as a registered derivatives transaction execution facility.

(b) *Definition.* As used in this part, the term ''eligible commercial entity'' means, and shall include, in addition to a party or entity so defined in section 1a(11) of the Act, a registered floor trader or floor broker trading for its own account, whose trading obligations are guaranteed by a registered futures commission merchant.

§ 37.2 Exemption.

Contracts, agreements or transactions traded on a derivatives transaction execution facility registered as such with the Commission under section 5a of the Act, the facility and the facility's operator are exempt from all Commission regulations for such activity, except for the requirements of this part 37 and §§ 1.3, 1.31, 1.59(d), 1.63(c), 15.05, 33.10, part 40 and part 190 of this chapter, and as applicable to the market, parts 15 through 21 of this chapter, which are applicable to a registered derivatives transaction execution facility as though they were set forth in this section and included specific reference to derivatives transaction execution facilities.

§ 37.3 Requirements for underlying commodities.

(a) *Trading facilities limited to eligible traders.* Trading facilities limited to eligible traders as defined by section 5a(b)(3) of the Act, may trade any contract of sale of a commodity for future delivery (or option on such a contract) on any of the following underlying commodities:

(1) Commodities having—

(i) A nearly inexhaustible deliverable supply;

(ii) A deliverable supply that is sufficiently large that the contract is highly unlikely to be susceptible to the threat of manipulation; or

(iii) No cash market;

(2) Commodities that are a security futures product, and the registered derivatives transaction execution facility is a national securities exchange registered under the Securities Exchange Act of 1934;

(3) Commodities for which the Commission has determined, based on the market characteristics and surveillance history, and the self-regulatory record and capacity of the facility, that trading in the contract (or option) based on that commodity is highly unlikely to be susceptible to the threat of manipulation; or

(4) Commodities that are agricultural commodities enumerated in section 1a(4) of the Act that have been so approved by the Commission under the procedures of paragraph (c) of this section.

(5) The commodities that meet the criteria of paragraph (a)(1) of this section are the commodities defined in section 1a(13) of the Act as ''excluded commodities.''

(6) The Commission may make the determination described in paragraph (a)(3) of this section by rule, regulation or order, after notice and an opportunity for a hearing through submission of written data, views and arguments. A registered derivatives transaction execution facility may request that the Commission make such an individualized determination by filing with the Secretary of the Commission at its Washington, DC headquarters a petition that includes:

(i) The terms and conditions of the product to be listed; and

(ii) A demonstration, supported by data, that the underlying commodity has a sufficiently liquid and deep cash market and a surveillance history based on actual trading experience and in light of any self-regulatory undertakings of the facility, to provide assurance that the contract or product is highly unlikely to be manipulated. The demonstration should address the following specific factors to the extent that the factor is not self-evident:

(A) A high level of cash-market liquidity;

(B) Cash-market bid-ask spreads that are narrow relative to traded values;

(C) Relatively frequent cash market transactions involving participants that represent major segments of the industry;

(D) The absence of material impediments to participation in the cash market by commercial entities;

(E) Transfer of ownership of the cash commodity that is easily and readily accomplished at minimal cost;

(F) A pattern of cash market pricing that exhibits continuity and the absence of frequent, sharp price changes such that a person cannot readily move materially the price of the product in normal cash market channels;

(G) A history of actual trading experience that the contract or product's terms and conditions provide for a deliverable supply, or a reliable and acceptable cash-settlement procedure, that is adequate to minimize the threat of market abuses such as price manipulation and distortions, congestion, and defaults; and

(H) Procedures to effectively oversee the market, including a large trader

reporting system, as well as a history of active surveillance to prevent or mitigate market problems.

(b) *Trading facilities limited to eligible commercial entities.* Any commodity, other than the agricultural commodities enumerated in section 1a(4) of the Act, is eligible under section 5a(b)(2)(F) of the Act to be traded on a derivatives transaction execution facility that limits participants on the facility to eligible commercial entities as defined by § 37.1(b) trading for their own account. *Provided, however,* an agricultural commodity enumerated in section 1a(4) of the Act may be so approved by the Commission under the procedures of paragraph (c) of this section.

(c) *Enumerated agricultural commodities.* [Reserved]

§ 37.4 Election to trade excluded and exempt commodities.

A board of trade that is or elects to become a registered derivatives transaction execution facility may, pursuant to section 5a(g) of the Act, trade agreements, contracts, or transactions that are excluded or exempt from the Act pursuant to sections 2(c), 2(d), 2(g), or 2(h).

§ 37.5 Procedures for registration.

(a) *Notification by contract markets.* To operate as a registered derivatives transaction execution facility pursuant to section 5a of the Act, a board of trade, facility or entity that is designated as a contract market, must:

(1) Comply with the core principles for operation under section 5a(d) of the Act and the provisions of this part 37; and

(2) Notify the Commission of its intent to so operate by filing with the Secretary of the Commission at its Washington, DC headquarters a copy of the facility's rules (which may be trading protocols) or a list of the designated contract market's rules that apply to operation of the derivatives transaction execution facility, and a certification by the contract market that it meets:

(i) The requirements for trading of section 5a(b) of the Act; and

(ii) The criteria for registration under section 5a(c) of the Act.

(b) *Registration by application.* A board of trade, facility or entity shall be deemed to be registered as a derivatives transaction execution facility thirty days after receipt by the Commission of an application for registration as a derivatives transaction execution facility unless notified otherwise during that period, or, as determined by Commission order, registered upon conditions, if:

(1) The application demonstrates that the applicant satisfies the requirements for trading and the criteria for registration of sections 5a(b) and 5a(c) of the Act, respectively;

(2) The submission is labeled ''Application for DTF Registration'';

(3) The submission includes:

(i) The derivatives transaction execution facility's rules, which may be trading protocols;

(ii) Any agreements entered into or to be entered into between or among the facility, its operator or its participants, technical manuals and other guides or instructions for users of such facility, descriptions of any system test procedures, tests conducted or test results, and descriptions of the trading mechanism or algorithm used or to be used by such facility, to the extent such documentation was otherwise prepared; and

(iii) To the extent that compliance with the requirements for trading or the criteria for recognition is not self-evident, a brief explanation of how the rules or trading protocols satisfy each of the conditions for registration;

(4) The applicant does not amend or supplement the application for recognition, except as requested by the Commission or for correction of typographical errors, renumbering or other nonsubstantive revisions, during that period;

(5) The applicant identifies with particularity information in the application that will be subject to a request for confidential treatment and supports that request for confidential treatment with reasonable justification; and

(6) The applicant has not instructed the Commission in writing at the time of submission of the application or during the review period to review the application pursuant to the time provisions of and procedures under section 6 of the Act.

(c) *Guidance for applicants.* Appendix A to this part provides guidance to applicants for registration as a derivatives transaction execution facility on how the conditions for registration in sections 5a(b) and 5a(c) of the Act could be satisfied.

(d) *Termination of fast track review.* During the thirty-day period for review pursuant to paragraph (b) of this section, the Commission shall notify the applicant seeking registration that the Commission is terminating review under this section and will review the proposal under the time period and procedures of section 6 of the Act, if it appears that the application's form or substance fails to meet the requirements of this part. This termination notification will state the nature of the issues raised and the specific condition of registration that the applicant would violate, appears to violate, or the violation of which cannot be ascertained from the application. Within ten days of receipt of this termination notification, the applicant seeking registration may request that the Commission render a decision whether to register the derivatives transaction execution facility or to institute a proceeding to deny the proposed application under procedures specified in section 6 of the Act by notifying the Commission that the applicant seeking registration views its submission as complete and final as submitted.

(e) *Request for withdrawal of application for registration or withdrawal of registration.* An applicant to be registered, or a registered derivatives transaction execution facility may withdraw its application or its registration by filing with the Commission at its Washington, DC, headquarters such a request. Withdrawal from registration shall not affect any action taken or to be taken by the Commission based upon actions, activities or events occurring during the time that the application for registration was pending with, or that the facility was registered by, the Commission.

(f) *Delegation of authority.*

(1) The Commission hereby delegates, until it orders otherwise, to the Director of the Division of Trading and Markets and separately to the Director of Economic Analysis or such other employee or employees as the Directors may designate from time to time, with the concurrence of the General Counsel or the General Counsel's delegatee, authority to exercise the functions provided under paragraph (b) of this section.

(2) The directors may submit to the Commission for its consideration any matter that has been delegated in this paragraph.

(3) Nothing in this paragraph prohibits the Commission, at its election, from exercising the authority delegated in paragraph (f)(1) of this section.

§ 37.6 Compliance with core principles.

(a) *In general.* To maintain registration as a derivatives transaction execution facility upon commencing operations by listing products for trading or otherwise and on a continuing basis thereafter, the derivatives transaction execution facility must have the capacity to be, and be, in compliance with the core principles of section 5a(d) of the Act.

(b) *New derivatives transaction execution facilities.* (1) *Certification of compliance.* Unless an applicant for

registration has chosen to make a voluntary demonstration under paragraph (b)(2) of this section, a newly registered derivatives transaction execution facility at the time it commences operations must certify to the Commission that it has the capacity to, and will, operate in compliance with the core principles under section 5a(d) of the Act.

(2) *Voluntary demonstration of compliance.* An applicant for registration may choose to make a voluntary demonstration of its capacity to operate in compliance with the core principles as follows:

(i) At least thirty days prior to commencing operations, the applicant for registration must file with the Secretary of the Commission at its Washington, DC headquarters, either separately or with the application required by § 37.4, a submission that includes:

(A) The label, ''Demonstration of Compliance with Core Principles for Operation'';

(B) The derivatives transaction execution facility's rules, which may be trading protocols, that enable or empower the facility to comply with the core principles;

(C) Any agreements entered into or to be entered into between or among the facility, its operator or its participants that enable or empower the facility to comply with the core principles, including where applicable, technical manuals and other guides or instructions for users of the facility; and

(D) To the extent that capacity to comply with a core principle is not self-evident, a brief explanation of how the facility has the capacity to meet the core principle.

(ii) Unless the applicant requests an extension of time, the applicant shall be deemed to have demonstrated its capacity to comply with the core principles thirty days after receipt by the Commission, unless notified otherwise.

(iii) If it appears that the applicant has failed to make the requisite showing, the Commission will so notify the applicant at the end of that period. Upon commencement of operations by the derivatives transaction execution facility, such a notice may be considered by the Commission in a determination to issue a notice of violation of core principles under section 5c(d) of the Act.

(c) *Existing derivatives transaction execution facilities.* Upon request by the Commission, a registered derivatives transaction execution facility shall file with the Commission such data, documents and other information as the Commission may specify in its request that demonstrates that the registered derivatives transaction execution facility is in compliance with one or more core principles as specified in the request or that is requested by the Commission to enable the Commission to satisfy its obligations under the Act.

(d) *Guidance regarding compliance with core principles.* A derivatives transaction execution facility may meet the following core principles of section 5a(d) of the Act as specified in this paragraph:

(1) *Compliance with rules.* The core principle regarding compliance with rules under section 5a(d)(2) of the Act may be met, as appropriate to the facility, through the effective monitoring of limitations on access to the facility;

(2) *Monitoring of trading.* The core principle regarding monitoring of trading under section 5a(d)(3) of the Act may be met, as appropriate to the market and the products traded thereon, by providing information to the Commission as requested to satisfy the Commission's obligations under the Act;

(3) *Disclosure of general information.* The core principle regarding disclosure of general information relevant to participation in trading on the facility under section 5a(d)(4)(D) of the Act also includes providing to market participants on a fair, equitable and timely basis information regarding, as appropriate to the market, prices, bids and offers, and such other information that the Commission may determine by rule, regulation or order, after notice and an opportunity for a hearing through submission of written data, views and arguments;

(4) *Daily publication of trading information.* The Commission will determine by order, after notice and an opportunity for a hearing through submission of written data, views and arguments, whether the requirement of the core principle on publication of trading information under section 5a(d)(5) of the Act applies to a particular product or products traded on a facility;

(5) *Fitness.* Appropriate minimum standards for participants having direct access to the facility under the core principle on fitness pursuant to section 5a(d)(6) of the Act also includes natural persons that directly or indirectly have greater than a ten percent ownership interest in the facility; and

(6) *In general.* Appendix B to this part provides guidance to registered derivatives transaction execution facilities on how the core principles under section 5a(d) of the Act could be satisfied.

§ 37.7 Additional requirements.

(a) *Products.* Notwithstanding the provisions of section 5c(c) of the Act and § 40.2 of this chapter, derivatives transaction execution facilities need only notify the Commission of the listing of new products for trading, posting of new product descriptions, terms and conditions or trading protocols or providing for a new system product functionality, by filing with the Secretary of the Commission at its Washington, D.C. headquarters, a submission labeled ''DTF Notice of Product Listing'' that includes the text of the product's terms or conditions, product description, trading protocol or description of the system functionality or by electronic notification of the foregoing at the time traders or participants in the market are notified, but in no event later than the close of business on the business day preceding initial listing, posting or implementation of the trading protocol or system functionality.

(b) *Material modifications.* Notwithstanding the provisions of section 5c(c) of the Act, registered derivatives transaction execution facilities need not certify rules or rule amendments under § 40.6 of this chapter, and must only notify the Commission prior to placing into effect or amending such a rule, which includes trading protocols, by:

(1) Filing with the Secretary of the Commission at its Washington, D.C. headquarters at the time traders or participants in the market are notified, but (unless taken as an emergency action) in no event later than the close of business on the business day preceding implementation of the rule, a submission labeled, ''DTF Rule Notice.'' The submission shall include the text of the rule or rule amendment (deletions and additions must be indicated); or

(2) By electronic notification to the Commission of the rule to be placed into effect or to be changed, in a format approved by the Secretary of the Commission, at the time traders or participants in the market are notified, but (unless taken as an emergency action) in no event later than the close of business on the business day preceding implementation. *Provided, however,* the derivatives transaction execution facility need not notify the Commission of rules or rule amendments for which no certification is required under § 40.6(c) of this chapter.

(3) The derivatives transaction execution facility must maintain documentation regarding all changes to rules, terms and conditions or trading protocols.

(c) *Voluntary request for Commission approval of rules or products.* (1) A board of trade or trading facility seeking to be registered as, or registered as, a derivatives transaction execution facility, may request that the Commission approve under section 5c(c) of the Act, any or all of its rules and subsequent amendments thereto, including both operational rules and the terms or conditions of products listed for trading on the facility, prior to their implementation or, notwithstanding the provisions of section 5c(c)(2) of the Act, at anytime thereafter, under the procedures of §§ 40.5 or 40.3 of this chapter, as applicable. A derivatives transaction execution facility may label a product in its rules as, ''Listed for trading pursuant to Commission approval,'' if the product and its terms or conditions have been approved by the Commission and it may label as, ''Approved by the Commission,'' only those rules that have been so approved.

(2) Notwithstanding the forty-five day review period for voluntary approval under § 40.3(b) of this chapter, the operating rules and the terms and conditions of one product submitted for voluntary Commission approval under § 40.3 of this chapter, that has been submitted with, and at the same time as, an application for registration as a derivatives transaction execution facility, will be deemed approved by the Commission thirty days after receipt by the Commission, or at the conclusion of such extended period as provided under § 40.3(c) of this chapter.

(3) An applicant for registration, or a registered derivatives transaction execution facility may request that the Commission consider under the provisions of section 15(b) of the Act any of the derivatives transaction execution facility's rules or policies, including both operational rules and the terms or conditions of products listed for trading, at the time of registration or thereafter.

(d) *Identify participants.* Registered derivatives transaction execution facilities must keep a record in permanent form, which shall show the true name, address, and principal occupation or business of any foreign trader executing transactions on the facility. In addition, upon request, a derivatives transaction execution facility shall provide to the Commission information regarding the name of any person exercising control over the trading of such foreign trader. *Provided, however,* this paragraph shall not apply to a derivatives transaction execution facility insofar as transactions in futures or option contracts of foreign traders are executed through, or the resulting transactions are maintained in accounts carried by, a registered futures commission merchant or introduced by an introducing broker subject to § 1.37 of this chapter.

(e) *Identify persons subject to fitness requirement.* Upon request by any representative of the Commission, a registered derivatives transaction execution facility shall furnish to the Commission's representative a current list of persons subject to the fitness requirements of section 5a(d)(6) of the Act.

§ 37.8 Information relating to transactions on derivatives transaction execution facilities.

(a) *Special calls for information from derivatives transaction execution facilities.* Upon special call by the Commission, a registered derivatives transaction execution facility shall provide to the Commission such information related to its business as a derivatives transaction execution facility, including information relating to data entry and trade details, in the form and manner and within the time as specified by the Commission in the special call.

(b) *Special calls for information from futures commission merchants.* Upon special call by the Commission, each person registered as a futures commission merchant that carries or has carried an account for a customer on a derivatives transaction execution facility shall provide information to the Commission concerning such accounts or related positions carried for the customer on that or other facilities or markets, in the form and manner and within the time specified by the Commission in the special call.

(c) *Special calls for information from participants.* Upon special call by the Commission, any person who enters into or has entered into an agreement, contract or transaction on a derivatives transaction execution facility shall provide information to the Commission concerning such agreements, contracts or transactions or related agreements, contracts or transactions, or concerning related positions on other facilities or markets, in the form and manner and within the time specified by the Commission in the special call.

(d) *Delegation of authority.* The Commission hereby delegates, until the Commission orders otherwise, the authority set forth in paragraphs (a) through (c) of this section to the Directors of the Division of Trading and Markets and separately to the Director of Economic Analysis or such other employee or employees as the Directors may designate from time to time. The Directors may submit to the Commission for its consideration any matter that has been delegated in this paragraph. Nothing in this paragraph prohibits the Commission, at its election, from exercising the authority delegated in this paragraph.

§ 37.9 Enforceability.

An agreement, contract or transaction entered into on, or pursuant to the rules of, a registered derivatives transaction execution facility shall not be void, voidable, subject to rescission or otherwise invalidated or rendered unenforceable as a result of:

(a) A violation by the registered derivatives transaction execution facility of the provisions of section 5a of the Act or this part 37; or

(b) Any Commission proceeding to alter or supplement a rule, term or condition under section 8a(7) of the Act or any other proceeding the effect of which is to disapprove, alter, supplement, or require a registered derivatives transaction execution facility to adopt a specific term or condition, trading rule or procedure, or to take or refrain from taking a specific action.

Appendix A to Part 37—Application Guidance

This appendix provides guidance to applicants for registration as derivatives transaction execution facilities under sections 5a(c) and 6 of the Act and § 37.5, on meeting the criteria for registration both initially and on an ongoing basis. The guidance following each registration criterion is illustrative only of the types of matters an applicant may address, as applicable, and is not intended to be a mandatory checklist. Addressing the issues and questions set forth in this appendix would help the Commission in its consideration of whether the application has met the criteria for registration. To the extent that compliance with, or satisfaction of, a criterion for registration is not self-explanatory from the face of the derivatives transaction execution facility's rules, which may be terms and conditions or trading protocols, the application should include an explanation or other form of documentation demonstrating that the applicant meets the registration criteria of section 5a(c) of the Act and § 37.5.

Registration Criterion 1 of section 5a(c) of the Act: *IN GENERAL—To be registered as a registered derivatives transaction execution facility, the board of trade shall be required to demonstrate to the Commission only that the board of trade meets the criteria specified in § 37.5(b).*

A board of trade preparing to submit to the Commission an application to operate as a registered derivatives transaction execution facility is encouraged to contact Commission staff for guidance and assistance in preparing its application. Applicants may submit a draft application for review prior to the submission of an actual application without

triggering the application review procedures of § 37.5.

Registration Criterion 2 of section 5a(c) of the Act: *DETERRENCE OF ABUSES—The board of trade shall establish and enforce trading and participation rules that will deter abuses and has the capacity to detect, investigate, and enforce those rules, including means to—(A) obtain information necessary to perform the functions required under this section; or (B) use technological means to—(i) provide market participants with impartial access to the market; and (ii) capture information that may be used in establishing whether rule violations have occurred.*

An application of a board of trade to operate as a registered derivatives transaction execution facility should include arrangements and resources to deter abuses by effective and affirmative rule enforcement, including documentation of the facility's authority to do so; such trading and participation rules should be designed with adequate specificity. The submission should include documentation on the ability of the facility either to obtain necessary information or to provide market participants with impartial access and capture information for use in establishing possible rule violations.

Registration Criterion 3 of section 5a(c) of the Act: *TRADING PROCEDURES—The board of trade shall establish and enforce rules or terms and conditions defining, or specifications detailing, trading procedures to be used in entering and executing orders traded on the facilities of the board of trade. The rules may authorize—(A) transfer trades or office trades; (B) an exchange of—(i) futures in connection with a cash commodity transaction; (ii) futures for cash commodities; or (iii) futures for swaps; or (C) a futures commission merchant, acting as principal or agent, to enter into or confirm the execution of a contract for the purchase or sale of a commodity for future delivery if the contract is reported, recorded, or cleared in accordance with the rules of the registered derivatives transaction execution facility or a derivatives clearing organization.*

(a) A submission of a board of trade to operate as an electronic registered derivatives transaction execution facility should include the system's trade-matching algorithm and order entry procedures. A submission involving a trade-matching algorithm that is based on order priority factors other than on a best price/earliest time basis should include a brief explanation of the alternative algorithm.

(b) A board of trade's specifications on initial and periodic objective testing and review of proper system functioning, adequate capacity, and security for any automated systems should be included in its submission. The Commission believes that the guidelines issued by the International Organization of Securities Commissions (IOSCO) in 1990 (which have been referred to as the ''Principles for Screen-Based Trading Systems''), and adopted by the Commission on November 21, 1990 (55 FR 48670), as supplemented in October 2000, are appropriate guidelines for an electronic trading facility to apply to electronic trading systems. Any program of objective testing and review of the system should be performed by a qualified independent professional (but not necessarily a third-party contractor).

(c) A registered derivatives transaction execution facility that authorizes transfer trades or office trades, an exchange of futures for physicals or futures for swaps, or any other non-competitive transactions, including block trades, should have rules particularly authorizing such transactions and establishing appropriate recordkeeping requirements. Block trading rules should ensure that the block trading does not operate in a manner that compromises the integrity of the prices or price discovery on the relevant market.

Registration Criterion 4 of section 5a(c) of the Act: *FINANCIAL INTEGRITY OF TRANSACTIONS—The board of trade shall establish and enforce rules or terms and conditions providing for the financial integrity of transactions entered on or through the facilities of the board of trade, and rules or terms and conditions to ensure the financial integrity of any futures commission merchants and introducing brokers and the protection of customer funds.*

(a) A board of trade operating as a registered derivatives transaction execution facility should provide for the financial integrity of transactions by setting appropriate minimum financial standards for members and non-intermediated market participants, appropriate margin forms, and appropriate default rules and procedures. If cleared, agreements, contracts and transactions in excluded or exempt commodities that are traded on a DTF may be cleared through clearing organizations other than DCOs registered with the Commission. The Commission believes ensuring and enforcing the financial integrity of transactions and intermediaries, and the protection of customer funds should include monitoring compliance with the facility's minimum financial standards. In order to monitor for minimum financial requirements, a facility should routinely receive and promptly review financial and related information.

(b) A registered derivatives transaction execution facility that allows customers that qualify as ''eligible traders'' under the definition found in section 5a(b)(3) of the Act only by trading through a registered futures commission merchant pursuant to section 5a(b)(3)(B), should have rules concerning the protection of customer funds that address appropriate minimum financial standards for intermediaries, the segregation of customer and proprietary funds, the custody of customer funds, the investment standards for customer funds, related recordkeeping procedures and related intermediary default procedures.

Appendix B to Part 37—Guidance on Compliance With Core Principles

1. This appendix provides guidance concerning the core principles with which a registered derivatives transaction execution facility must comply to maintain registration under section 5a(d) of the Act and § 37.5(a). This guidance is illustrative only and is not intended to be a mandatory checklist.

2. If a registered derivatives transaction execution facility chooses to certify that it has the capacity to, and upon initiation will, operate in compliance with the core principles under section 5a(d) of the Act and § 37.6, it should consider the issues set forth in this appendix prior to certification.

3. Alternatively, if a registered derivatives transaction execution facility chooses pursuant to § 37.6(b)(2) to provide the Commission with a demonstration of its compliance with core principles, addressing the issues set forth in this appendix would help the Commission in its consideration of such compliance. To the extent that compliance with, or satisfaction of, the core principles is not self-explanatory from the face of the derivatives transaction execution facility's rules, which may be terms and conditions or trading protocols, a submission under § 37.6(b)(2) should include an explanation or other form of documentation demonstrating that the derivatives transaction execution facility complies with the core principles.

Core Principle 1 of section 5a(d) of the Act: *IN GENERAL—To maintain the registration of a board of trade as a derivatives transaction execution facility, a board of trade shall comply with the core principles specified in this appendix.*

The board of trade shall have reasonable discretion in establishing the manner in which the board of trade complies with the core principles. A board of trade newly registered to operate as a derivatives transaction execution facility must certify or satisfactorily demonstrate its capacity to operate in compliance with the core principles under section 5a(d) of the Act prior to the commencement of its operations. The Commission also may require that a board of trade operating as a registered derivatives transaction execution facility demonstrate to the Commission that it is operating in compliance with one or more core principles.

Core Principle 2 of section 5a(d) of the Act: *COMPLIANCE WITH RULES—The board of trade shall monitor and enforce the rules of the facility, including any terms and conditions of any contracts traded on or through the facility and any limitations on access to the facility.*

(a) A board of trade operating as a registered derivatives transaction execution facility should have arrangements, resources and authority to detect and deter abuses by effectively and affirmatively enforcing its rules (which, in the case of a facility that restricts traders to eligible commercial entities, may be the effective monitoring of limitations on access to the facility), including the authority and ability to collect or capture information and documents on both a routine and non-routine basis and to investigate effectively possible rule violations.

(b) This should include the authority and ability to discipline, limit or suspend, and/or terminate activities or access of a member, including members with trading privileges but having no, or only nominal equity, in the facility and non-member market participants or, in the case of a derivatives transaction execution facility restricting its traders to

eligible commercial entities, the authority and ability to terminate activities or access of such a member. In either case, any termination should be carried out pursuant to clear and fair standards that are available and transparent to the member or market participant.

Core Principle 3 of section 5a(d) of the Act: *MONITORING OF TRADING—The board of trade shall monitor trading in the contracts of the facility to ensure orderly trading in the contract and to maintain an orderly market while providing any necessary trading information to the Commission to allow the Commission to discharge the responsibilities of the Commission under the Act.*

(a) Arrangements and resources to detect and deter abuses through effective trade monitoring programs should facilitate, on both a routine and nonroutine basis, direct supervision of the market. Appropriate objective testing and review of any automated systems should occur initially and periodically to ensure proper system functioning, adequate capacity and security. The analysis of data collected should be suitable for the type of information collected and should occur in a timely fashion. A board of trade operating as a registered derivatives transaction execution facility should have the authority to collect the information and documents necessary to reconstruct trading for appropriate market analysis as it carries out its programs to ensure orderly trading and to maintain an orderly market. The facility also should have the authority to intervene as necessary to maintain an orderly market.

(b) Alternatively, if a board of trade operating as a registered derivatives transaction execution facility restricts contracts traded to those under §§ 37.3(a)(1) and 37.3(b), it may choose to satisfy this core principle by providing information to the Commission as requested by the Commission to satisfy its obligations under the Act. The facility should have the authority to collect or capture and retrieve all necessary information.

Core Principle 4 of section 5a(d) of the Act: *DISCLOSURE OF GENERAL INFORMATION—The board of trade shall disclose publicly and to the Commission information concerning—(A) contract terms and conditions; (B) trading conventions, mechanisms, and practices; (C) financial integrity protections; and (D) other information relevant to participation in trading on the facility.*

The Commission considers that the public disclosure of information required under the core principle refers to disclosure to market participants, where the facility's user agreement requires all market participants to keep such information confidential. A board of trade operating as a registered derivatives transaction execution facility should have arrangements and resources for the disclosure and explanation of contract terms and conditions, trading conventions, trading mechanisms, trading practices, system functioning, system capacity, and financial integrity protections, including whether eligible contract participants will have the right to opt out of segregation of customer funds. Such information may be made publicly available through the derivatives transaction execution facility's website. The facility should also, as appropriate to the market, make information regarding prices, bids and offers, or other information as determined by the Commission, readily available to market participants on a fair, equitable and timely basis. Furthermore, the facility should make available information concerning steps taken by the facility in response to an emergency.

Core Principle 5 of section 5a(d) of the Act: *DAILY PUBLICATION OF TRADING INFORMATION—The board of trade shall make public daily information on settlement prices, volume, open interest, and opening and closing ranges for contracts traded on the facility if the Commission determines that the contracts perform a significant price discovery function for transactions in the cash market for the commodity underlying the contracts.*

A board of trade operating as a registered derivatives transaction execution facility should provide to the public information regarding settlement prices, price range, trading volume, open interest and other related market information for all applicable contracts, as determined by the Commission. The Commission will determine by order, after notice and an opportunity for a hearing through submission of written data, views and arguments, whether the requirement of the core principle on publication of trading information under section 5a(d)(5) of the Act applies to a particular product or products traded on a facility. Provision of information for any applicable contract could be through such means as providing the information to a financial information service or by timely placing the information on a facility's website.

Core Principle 6 of section 5a(d): *FITNESS STANDARDS—The board of trade shall establish and enforce appropriate fitness standards for directors, members of any disciplinary committee, members, and any other persons with direct access to the facility, including any parties affiliated with any of the persons described in this core principle.*

A derivatives transaction execution facility should have appropriate eligibility criteria for the categories of persons set forth in the core principle that would include standards for fitness and for the collection and verification of information supporting compliance with such standards. Minimum standards of fitness for persons who have member voting privileges, governing obligations or responsibilities, or who exercise disciplinary authority are those bases for refusal to register a person under section 8a(2) of the Act. In addition, persons who have governing obligations or responsibilities, or who exercise disciplinary authority, should not have a significant history of serious disciplinary offenses, such as those that would be disqualifying under § 1.63 of this chapter. Eligible contract participants or eligible commercial entities who are members but do not have these privileges, obligations, responsibilities or disciplinary authority could satisfy minimum fitness standards by meeting the standards that they must meet to qualify under the Act's respective definitions of eligible contract participants or eligible commercial entities. Natural persons who directly or indirectly have greater than a ten percent ownership interest in a facility should meet the fitness standards applicable to members with voting rights. A demonstration of the fitness of the applicant's directors, members, or natural persons who directly or indirectly have greater than a ten percent ownership interest in a facility may include providing the Commission with registration information for such persons, certification to the fitness of such persons, an affidavit of such persons' fitness by the facility's counsel or other information substantiating the fitness of such persons.

Core Principle 7 of section 5a(d) of the Act: *CONFLICTS OF INTEREST—The board of trade shall establish and enforce rules to minimize conflicts of interest in the decision making process of the derivatives transaction execution facility and establish a process for resolving such conflicts of interest.*

The means to address conflicts of interest in decision-making of a board of trade operating as a registered derivatives transaction execution facility should include methods to ascertain the presence of conflicts of interest and to make decisions in the event of such a conflict. The Commission also believes that a board of trade operating as a registered derivatives transaction execution facility should provide for appropriate limitations on the use or disclosure of material non-public information gained through the performance of official duties by board members, committee members and facility employees or gained through an ownership interest in the facility.

Core Principle 8 of section 5a(d) of the Act: *RECORDKEEPING—The board of trade shall maintain records of all activities related to the business of the derivatives transaction execution facility in a form and manner acceptable to the Commission for a period of 5 years.*

Section 1.31 of this chapter governs recordkeeping obligations under the Act and the Commission's regulations thereunder. In order to provide broad flexible performance standards for recordkeeping, § 1.31 was updated and amended by the Commission in 1999. Accordingly, § 1.31 itself establishes the guidance regarding the form and manner for keeping records.

Core Principle 9 of section 5a(d) of the Act: *ANTITRUST CONSIDERATIONS—Unless necessary or appropriate to achieve the purposes of this Act, the board of trade shall endeavor to avoid—(A) adopting any rules or taking any actions that result in any unreasonable restraint of trade; or (B) imposing any material anticompetitive burden on trading on the derivatives transaction execution facility.*

A board of trade seeking to operate as a registered derivatives transaction execution facility may request that the Commission consider under the provisions of section 15(b) of the Act any of the board of trade's rules, which may be trading protocols or policies, and including both operational rules and the terms or conditions of products listed for trading, at the time it submits its registration application or thereafter. The

Commission intends to apply section 15(b) of the Act to its consideration of issues under this core principle in a manner consistent with that previously applied to contract markets.

10. Chapter I of 17 CFR is amended by adding new Part 38 as follows:

PART 38—DESIGNATED CONTRACT MARKETS

Sec.
38.1 Scope.
38.2 Exemption.
38.3 Procedures for designation by application.
38.4 Procedures for listing products and implementing contract market rules.
38.5 Information relating to contract market compliance.
38.6 Enforceability.

Appendix A to Part 38—Application Guidance

Appendix B to Part 38—Guidance on, and Acceptable Practices in, Compliance with Core Principles

Authority: 7 U.S.C. 2, 5, 6, 6c, 7 and 12a, as amended by the Commodity Futures Modernization Act of 2000, Appendix E of Pub. L. 106–554, 114 Stat. 2763 (2000).

§ 38.1 Scope.

The provisions of this part 38 shall apply to every board of trade or trading facility that has been designated as a contract market in a commodity under section 6 of the Act. *Provided, however,* nothing in this provision affects the eligibility of designated contract markets to operate under the provisions of parts 36 or 37 of this chapter.

§ 38.2 Exemption.

Agreements, contracts, or transactions traded on a designated contract market under section 6 of the Act, the contract market and the contract market's operator are exempt from all Commission regulations for such activity, except for the requirements of this part 38 and §§ 1.3, 1.12(e), 1.31, 1.38, 1.52, 1.59(d), 1.63(c), 1.67, 33.10, part 9, parts 15 through 21, part 40, and part 190 of this chapter.

§ 38.3 Procedures for designation by application.

(a) *Application.* A board of trade or trading facility shall be deemed to be designated as a contract market sixty days after receipt by the Commission of an application for designation unless notified otherwise during that period, or, as determined by Commission order, designated upon conditions, if:

(1) The application demonstrates that the applicant satisfies the criteria for designation of section 5(b) of the Act, the core principles for operation under section 5(d) of the Act and the provisions of this part 38;

(2) The application is labeled as being submitted pursuant to this part 38;

(3) The application includes a copy of the applicant's rules and, to the extent that compliance with the conditions for designation is not self-evident, a brief explanation of how the rules satisfy each of the conditions for designation;

(4) The applicant does not amend or supplement the designation application, except as requested by the Commission or for correction of typographical errors, renumbering or other nonsubstantive revisions, during that period;

(5) The applicant identifies with particularity information in the application that will be subject to a request for confidential treatment and supports that request for confidential treatment with reasonable justification; and

(6) The applicant has not instructed the Commission in writing at the time of submission of the application or during the review period to review the application pursuant to procedures under section 6 of the Act.

(b) *Guidance regarding application for designation.* An applicant for contract market designation may meet the following conditions for designation as specified in this paragraph:

(1) *Prevention of market manipulation.* The designation criterion to prevent market manipulation under section 5(b)(2) of the Act also includes the requirement that the designated contract market have a dedicated regulatory department, or delegation of that function;

(2) *Fair and equitable trading.* The designation criterion requiring fair and equitable trading rules under section 5(b)(3) of the Act also includes fair, equitable and timely availability to market participants of information regarding, as appropriate to the market, prices, bids and offers;

(3) *Disciplinary procedures.* The designation criterion to enforce disciplinary procedures under section 5(b)(6) of the Act may be satisfied by an organized exchange or a trading facility with respect to members with trading privileges but having no, or only nominal, equity, in the facility and non-member market participants of the contract market by expelling or by denying future access, either directly or indirectly, to such a person found to have violated the contract market's rules;

(4) *Governance fitness standards.* The requirement to establish appropriate minimum fitness standards for participants having direct access to the facility, under the core principle on fitness pursuant to section 5(d)(14) of the Act, includes natural persons that directly or indirectly have greater than a ten percent ownership interest in the facility; and

(5) *In general.* Appendix A to this part provides guidance to applicants for designation as contract markets on how the criteria for designation under section 5(b) of the Act can be satisfied, and Appendix B to this part provides guidance to applicants for designation and designated contract markets on how the core principles of section 5(d) of the Act can be satisfied;

(c) *Termination of fast track review.* During the sixty-day period for review pursuant to paragraph (a) of this section, the Commission shall notify the applicant seeking designation that the Commission is terminating review under this section and will review the proposal under the time period and procedures of section 6 of the Act, if it appears that the application's form or substance fails to meet the requirements of this part. This termination notification will state the nature of the issues raised and the specific condition of designation that the applicant would violate, appears to violate, or the violation of which cannot be ascertained from the application. Within ten days of receipt of this termination notification, the applicant seeking designation may request that the Commission render a decision whether to designate the contract market or to institute a proceeding to deny the proposed application under procedures specified in section 6 of the Act by notifying the Commission that the applicant views its submission as complete and final as submitted.

(d) *Request for withdrawal of application for designation or vacation of designation.* An applicant to be designated, or a designated contract market, may withdraw its application or vacate its designation under section 7 of the Act by filing with the Secretary of the Commission at its Washington, DC, headquarters such a request. Withdrawal of an application for designation or vacation of designation shall not affect any action taken or to be taken by the Commission based upon actions, activities or events occurring during the time that the application for designation was pending with, or that the facility was designated by, the Commission.

(e) *Delegation of authority.* (1) The Commission hereby delegates, until it orders otherwise, to the Director of the Division of Division of Trading and Markets and separately to the Director of Economic Analysis or such other employee or employees as the Directors may designate from time to time, with the concurrence of the General Counsel

or the General Counsel's delegatee, authority to notify the entity seeking designation under paragraph (a) of this section that review under those procedures is being terminated or to designate the entity as a contract market upon conditions.

(2) The Directors may submit to the Commission for its consideration any matter that has been delegated in this paragraph.

(3) Nothing in this paragraph prohibits the Commission, at its election, from exercising the authority delegated in paragraph (e)(1) of this section.

§ 38.4 Procedures for listing products and implementing contract market rules.

(a) *Request for Commission approval of rules and products.* (1) An applicant for designation, or a designated contract market, may request that the Commission approve under section 5c(c) of the Act, any or all of its rules and subsequent amendments thereto, including both operational rules and the terms or conditions of products listed for trading on the facility, prior to their implementation or, notwithstanding the provisions of section 5c(c)(2) of the Act, at anytime thereafter, under the procedures of §§ 40.5 or 40.3 of this chapter, as applicable. A designated contract market may label a product in its rules as, ''Listed for trading pursuant to Commission approval,'' if the product and its terms or conditions have been approved by the Commission and it may label as, ''Approved by the Commission,'' only those rules that have been so approved.

(2) Notwithstanding the forty-five day review period for voluntary approval under §§ 40.3(b) and 40.5(b) of this chapter, the operating rules and the terms and conditions of products submitted for voluntary Commission approval under §§ 40.3 or 40.5 of this chapter that have been submitted at the same time as, or while an application for contract market designation is pending, will be deemed approved by the Commission no earlier than the facility is deemed to be designated.

(b) *Self-certification of rules and products.* Rules of a designated contract market and subsequent amendments thereto, including both operational rules and the terms or conditions of products listed for trading on the facility, not voluntarily submitted for prior Commission approval pursuant to paragraph (a) of this section must be submitted to the Commission with a certification that the rule, rule amendment or product complies with the Act or rules thereunder pursuant to the procedures of §§ 40.6 and 40.2 of this chapter, as applicable. *Provided, however,* any rule or rule amendment that would, for a delivery month having open interest, materially change a term or condition of a contract for future delivery in an agricultural commodity enumerated in section 1a(4) of the Act, or of an option on such a contract or commodity, must be submitted to the Commission prior to its implementation for review and approval under § 40.4 of this chapter.

(c) An applicant for designation, or a designated contract market, may request that the Commission consider under the provisions of section 15(b) of the Act any of the contract market's rules or policies, including both operational rules and the terms or conditions of products listed for trading.

§ 38.5 Information relating to contract market compliance.

(a) Upon request by the Commission, a designated contract market shall file with the Commission such information related to its business as a contract market, including information relating to data entry and trade details, in the form and manner and within the time as specified by the Commission in the request.

(b) Upon request by the Commission, a designated contract market shall file with the Commission a written demonstration, containing such supporting data, information and documents, in the form and manner and within such time as the Commission may specify, that the designated contract market is in compliance with one or more core principles as specified in the request.

§ 38.6 Enforceability.

An agreement, contract or transaction entered into on or pursuant to the rules of a designated contract market shall not be void, voidable, subject to rescission or otherwise invalidated or rendered unenforceable as a result of:

(a) A violation by the designated contract market of the provisions of section 5 of the Act or this part 38; or

(b) Any Commission proceeding to alter or supplement a rule, term or condition under section 8a(7) of the Act, to declare an emergency under section 8a(9) of the Act, or any other proceeding the effect of which is to alter, supplement, or require a designated contract market to adopt a specific term or condition, trading rule or procedure, or to take or refrain from taking a specific action.

Appendix A to Part 38—Application Guidance

This appendix provides guidance for applicants for designation as a contract market under sections 5(b) and 6 of the Act and § 38.3, on meeting the criteria for designation both initially and on an ongoing basis. The guidance following each designation criterion is illustrative only of the types of matters an applicant may address, as applicable, and is not intended to be a mandatory checklist. Addressing the issues and questions set forth in this appendix would help the Commission in its consideration of whether the application has met the criteria for designation. To the extent that compliance with, or satisfaction of, a criterion for designation is not self-explanatory from the face of the contract market's rules, which may be trading protocols or terms and conditions, the application should include an explanation or other form of documentation demonstrating that the applicant meets the designation criteria of section 5(b) of the Act.

Designation Criterion 1 of section 5(b) of the Act: *IN GENERAL—To be designated as a contract market, the board of trade shall demonstrate to the Commission that the board of trade meets the criteria specified in this appendix.*

A board of trade preparing to submit to the Commission an application for designation as a contract market is encouraged to contact Commission staff for guidance and assistance in preparing an application. Applicants may submit a draft application for review and feedback prior to the submission of an actual application without triggering the application review procedures of § 38.3.

Designation Criterion 2 of section 5(b) of the Act: *PREVENTION OF MARKET MANIPULATION—The board of trade shall have the capacity to prevent market manipulation through market surveillance, compliance, and enforcement practices and procedures, including methods for conducting real-time monitoring of trading and comprehensive and accurate trade reconstructions.*

A designation application should demonstrate a capacity to prevent market manipulation, including that the contract market has trading and participation rules deterring abuses and a dedicated regulatory department, or an effective delegation of that function.

Designation Criterion 3 of section 5(b) of the Act: *FAIR AND EQUITABLE TRADING—The board of trade shall establish and enforce trading rules to ensure fair and equitable trading through the facilities of the contract market, and the capacity to detect, investigate, and discipline any person that violates the rules. The rules may authorize—(A) transfer trades or office trades; (B) an exchange of—(i) futures in connection with a cash commodity transaction; (ii) futures for cash commodities; or (iii) futures for swaps; or (C) a futures commission merchant, acting as principal or agent, to enter into or confirm the execution of a contract for the purchase or sale of a commodity for future delivery if the contract is reported, recorded, or cleared in accordance with the rules of the contract market or a derivatives clearing organization.*

(a) Establishing and enforcing trading rules to ensure fair and equitable trading on a contract market, among other things, includes providing to market participants, on

a fair, equitable and timely basis, information regarding, prices, bids and offers, as applicable to the market.

(b) Such trading rules should be designed with adequate specificity.

(c) A contract market that authorizes transfer trades or office trades; an exchange of futures for physicals or futures for swaps; or any other non-competitive transactions, including block trades, should have rules particularly authorizing such transactions and establishing appropriate recordkeeping requirements.

Designation Criterion 4 of section 5(b) of the Act: *TRADE EXECUTION FACILITY—The board of trade shall—(A) establish and enforce rules defining, or specifications detailing, the manner of operation of the trade execution facility maintained by the board of trade, including rules or specifications describing the operation of any electronic matching platform; and (B) demonstrate that the trade execution facility operates in accordance with the rules or specifications.*

(a) An application of a board of trade to be designated as a contract market should include the system's trade-matching algorithm and order entry procedures. An application involving a trade-matching algorithm that is based on order priority factors other than price and time should include a brief explanation of the algorithm.

(b) A designated contract market's specifications on initial and periodic objective testing and review of proper system functioning, adequate capacity and security for any automated systems should be included in its application. A board of trade should submit in the contract market application, information on the objective testing and review carried out on its automated system. The Commission believes that the guidelines issued by the International Organization of Securities Commissions (IOSCO) in 1990 (which have been referred to as the ''Principles for Screen-Based Trading Systems''), and adopted by the Commission on November 21, 1990 (55 FR 48670), as supplemented in October, 2000, are appropriate guidelines for an electronic trading facility to apply to electronic trading systems. Any program of objective testing and review of the system should be performed by a qualified independent professional (but not necessarily a third-party contractor).

Designation Criterion 5 of section 5(b) of the Act: *FINANCIAL INTEGRITY OF TRANSACTIONS—The board of trade shall establish and enforce rules and procedures for ensuring the financial integrity of transactions entered into by or through the facilities of the contract market, including the clearance and settlement of the transactions with a derivatives clearing organization.*

(a) A designated contract market should provide for the financial integrity of transactions by setting appropriate minimum financial standards for members and non-intermediated market participants, margining systems, appropriate margin forms and appropriate default rules and procedures. Absent Commission action pursuant to its exemptive authority under section 4(c) of the Act, transactions executed on the contract market (other than stock futures products), if cleared, must be cleared through a derivatives clearing organization registered as such with the Commission. The Commission believes ensuring and enforcing the financial integrity of transactions and intermediaries, and the protection of customer funds should include monitoring compliance with the contract market's minimum financial standards. In order to monitor for minimum financial requirements, a contract market should routinely receive and promptly review financial and related information.

(b) A designated contract market should have rules concerning the protection of customer funds that address appropriate minimum financial standards for intermediaries, the segregation of customer and proprietary funds, the custody of customer funds, the investment standards for customer funds, related recordkeeping procedures and related intermediary default procedures.

Designation Criterion 6 of section 5(b) of the Act: *DISCIPLINARY PROCEDURES—The board of trade shall establish and enforce disciplinary procedures that authorize the board of trade to discipline, suspend, or expel members or market participants that violate the rules of the board of trade, or similar methods for performing the same functions, including delegation of the functions to third parties.*

The disciplinary procedures established by a designated contract market should give the contract market both the authority and ability to discipline and limit or suspend a member's activities as well as the authority and ability to terminate a member's activities pursuant to clear and fair standards. The authority to discipline or limit or suspend the activities of a member or of a market participant could be established in a contract market's rules, user agreements or other means. An organized exchange or a trading facility could satisfy this criterion for a member with trading privileges but having no, or only nominal, equity, in the facility and for a non-member market participant by expelling or denying future access to such persons upon a finding that such a person has violated the board of trade's rules.

Designation Criterion 7 of section 5(b) of the Act: *PUBLIC ACCESS—The board of trade shall provide the public with access to the rules, regulations, and contract specifications of the board of trade.*

A board of trade operating as a contract market may provide information to the public by placing the information on its web site.

Designation Criterion 8 of section 5(b) of the Act: *ABILITY TO OBTAIN INFORMATION—The board of trade shall establish and enforce rules that will allow the board of trade to obtain any necessary information to perform any of the functions described in this appendix, including the capacity to carry out such international information-sharing agreements as the Commission may require.*

A designated contract market should have the authority to collect information and documents on both a routine and non-routine basis including the examination of books and records kept by the contract market's members and by non-intermediated market participants. Appropriate information-sharing agreements could be established with other boards of trade or the Commission could act in conjunction with the contract market to carry out such information sharing.

Appendix B to Part 38—Guidance on, and Acceptable Practices in, Compliance with Core Principles

1. This appendix provides guidance concerning the core principles with which a board of trade must comply to maintain designation under section 5(d) of the Act and §§ 38.3 and 38.5. The guidance is provided in paragraph (a) following each core principle and it can be used to demonstrate to the Commission core principle compliance, under §§ 38.3(a) and 38.5. The guidance for each core principle is illustrative only of the types of matters a board of trade may address, as applicable, and is not intended to be a mandatory checklist. Addressing the issues and questions set forth in this appendix would help the Commission in its consideration of whether the board of trade is in compliance with the core principles. To the extent that compliance with, or satisfaction of, a core principle is not self-explanatory from the face of the board of trade's rules, which may be terms and conditions or trading protocols, an application pursuant to § 38.3, or a submission pursuant to § 38.5 should include an explanation or other form of documentation demonstrating that the board of trade complies with the core principles.

2. Acceptable practices meeting the requirements of the core principles are set forth in paragraph (b) following each core principle. Boards of trade that follow the specific practices outlined under paragraph (b) for any core principle in this appendix will meet the applicable core principle. Paragraph (b) is for illustrative purposes only, and does not state the exclusive means for satisfying a core principle.

Core Principle 1 of section 5(d) of the Act: *IN GENERAL—To maintain the designation of a board of trade as a contract market, the board of trade shall comply with the core principles specified in this subsection. The board of trade shall have reasonable discretion in establishing the manner in which it complies with the core principles.*

A board of trade applying for designation as a contract market must satisfactorily demonstrate its capacity to operate in compliance with the core principles under section 5(d) of the Act and § 38.3. The Commission may require that a board of trade operating as a contract market demonstrate to the Commission that it is in compliance with one or more core principles.

Core Principle 2 of section 5(d) of the Act: *COMPLIANCE WITH RULES—The board of trade shall monitor and enforce compliance with the rules of the contract market, including the terms and conditions of any contracts to be traded and any limitations on access to the contract market.*

(a) *Application guidance.* (1) A designated contract market should have arrangements and resources for effective trade practice surveillance programs, with the authority to

collect information and documents on both a routine and non-routine basis including the examination of books and records kept by the contract market's members and by non-intermediated market participants. The arrangements and resources should facilitate the direct supervision of the market and the analysis of data collected. Trade practice surveillance programs could be carried out by the contract market itself or through delegation to a third party. If the contract market delegates the responsibility of carrying out a trade practice surveillance program to a third party, such third party should have the capacity and authority to carry out such program, and the contract market should retain appropriate supervisory authority over the third party.

(2) A designated contract market should have arrangements, resources and authority for effective rule enforcement. The Commission believes that this should include the authority and ability to discipline and limit, or suspend the activities of a member or market participant as well as the authority and ability to terminate the activities of a member or market participant pursuant to clear and fair standards. An organized exchange or a trading facility could satisfy this criterion for members with trading privileges but having no, or only nominal, equity, in the facility and non-member market participants, by expelling or denying such persons future access upon a determination that such a person has violated the board of trade's rules.

(b) *Acceptable practices.* An acceptable trade practice surveillance program generally would include:

(1) Maintenance of data reflecting the details of each transaction executed on the contract market;

(2) Electronic analysis of this data routinely to detect potential trading violations;

(3) Appropriate and thorough investigative analysis of these and other potential trading violations brought to the contract market's attention; and

(4) Prompt and effective disciplinary action for any violation that is found to have been committed. The Commission believes that the latter element should include the authority and ability to discipline and limit or suspend the activities of a member or market participant pursuant to clear and fair standards that are available to market participants. *See, e.g.* 17 CFR part 8.

Core Principle 3 of section 5(d) of the Act: *CONTRACTS NOT READILY SUBJECT TO MANIPULATION—The board of trade shall list on the contract market only contracts that are not readily susceptible to manipulation.*

(a) *Application guidance.* Contract markets may list new products for trading by self-certification under § 40.2 of this chapter or may submit products for Commission approval under § 40.3 and part 40, Appendix A, of this chapter.

(b) *Acceptable practices.* Guideline No. 1, 17 CFR part 40, Appendix A may be used as guidance in meeting this core principle for both new product listings and existing listed contracts.

Core Principle 4 of section 5(d) of the Act: *MONITORING OF TRADING—The board of trade shall monitor trading to prevent manipulation, price distortion, and disruptions of the delivery or cash-settlement process.*

(a) *Application guidance.* A contract market could prevent market manipulation through a dedicated regulatory department, or by delegation of that function to an appropriate third party.

(b) *Acceptable practices.* (1) An acceptable program for monitoring markets will generally involve the collection of various market data, including information on traders' market activity. Those data should be evaluated on an ongoing basis in order to make an appropriate regulatory response to potential market disruptions or abusive practices.

(2) The designated contract market should collect data in order to assess whether the market price is responding to the forces of supply and demand. Appropriate data usually include various fundamental data about the underlying commodity, its supply, its demand, and its movement through marketing channels. Especially important are data related to the size and ownership of deliverable supplies—the existing supply and the future or potential supply, and to the pricing of the deliverable commodity relative to the futures price and relative to similar, but nondeliverable, kinds of the commodity. For cash-settled markets, it is more appropriate to pay attention to the availability and pricing of the commodity making up the index to which the market will be settled, as well as monitoring the continued suitability of the methodology for deriving the index.

(3) To assess traders' activity and potential power in a market, at a minimum, every contract market should have routine access to the positions and trading of its market participants and, if applicable, should provide for such access through its agreements with its third-party provider of clearing services. Although clearing member data may be sufficient for some contract markets, an effective surveillance program for contract markets with substantial numbers of customers trading through intermediaries should employ a much more comprehensive large-trader reporting system (LTRS).

Core Principle 5 of section 5(d) of the Act: *POSITION LIMITATIONS OR ACCOUNTABILITY—To reduce the potential threat of market manipulation or congestion, especially during trading in the delivery month, the board of trade shall adopt position limitations or position accountability for speculators, where necessary and appropriate.*

(a) *Application guidance.* [Reserved]

(b) *Acceptable practices.*

(1) In order to diminish potential problems arising from excessively large speculative positions, and to facilitate orderly liquidation of expiring futures contracts, markets may need to set limits on traders' positions for certain commodities. These position limits specifically may exempt bona fide hedging, permit other exemptions, or set limits differently by markets, by delivery months, or by time periods. For purposes of evaluating a contract market's speculative-limit program, the Commission considers the specified limit levels, aggregation policies, types of exemptions allowed, methods for monitoring compliance with the specified levels, and procedures for enforcement to deal with violations.

(2) Provisions concerning speculative position limits are set forth in part 150. In general, position limits are not necessary for markets where the threat of excessive speculation or manipulation is nonexistent or very low. Thus, contract markets do not need to adopt speculative position limits for futures markets on major foreign currencies, contracts based on certain financial instruments having very liquid and deep underlying cash markets, and contracts specifying cash settlement where the potential for distortion of such price is negligible. Where speculative position limits are necessary, acceptable speculative-limit levels typically should be set in terms of a trader's combined position in the futures contract plus its position in the related option contract (on a delta-adjusted basis).

(3) A contract market may provide for position accountability provisions in lieu of position limits for contracts on financial instruments, intangible commodities, or certain tangible commodities. Markets appropriate for position accountability rules include those with large open-interest, high daily trading volumes and liquid cash markets.

(4) Spot-month limits should be adopted for markets based on commodities having more limited deliverable supplies or where otherwise necessary to minimize the susceptibility of the market to manipulation or price distortions. The level of the spot limit for physical-delivery markets should be based upon an analysis of deliverable supplies and the history of spot-month liquidations. Spot-month limits for physical-delivery markets are appropriately set at no more than 25 percent of the estimated deliverable supply. For cash-settled markets, spot-month position limits may be necessary if the underlying cash market is small or illiquid such that traders can disrupt the cash market or otherwise influence the cash-settlement price to profit on a futures position. In these cases, the limit should be set at a level that minimizes the potential for manipulation or distortion of the futures contract's or the underlying commodity's price. Markets may elect not to provide all-months-combined and non-spot month limits.

(5) Contract markets should have aggregation rules that apply to those accounts under common control, those with common ownership, i.e., where there is a ten percent or greater financial interest, and those traded according to an express or implied agreement. Contract markets will be permitted to set more stringent aggregation policies. For example, one major board of trade has adopted a policy of automatically aggregating the position of members of the same household, unless they were granted a specific waiver. Contract markets may grant exemptions to their position limits for bona fide hedging (as defined in § 1.3(z) of this chapter) and may grant exemptions for reduced risk positions, such as spreads, straddles and arbitrage positions.

(6) Contract markets with many products with large numbers of traders should have an automated means of detecting traders' violations of speculative limits or exemptions. Contract markets should monitor the continuing appropriateness of approved exemptions by periodically reviewing each trader's basis for exemption or requiring a reapplication.

(7) Contract markets should establish a program for effective enforcement of these limits Contract markets should use their LTRS to monitor and enforce daily compliance with position limit rules. The Commission notes that a contract market may allow traders to periodically apply to the contract market for an exemption and, if appropriate, be granted a position level higher than the applicable speculative limit. The contract market should establish a program to monitor approved exemptions from the limits. The position levels granted under such hedge exemptions generally are based upon the trader's commercial activity in related markets. Contract markets may allow a brief grace period where a qualifying trader may exceed speculative limits or an existing exemption level pending the submission and approval of appropriate justification. A contract market should consider whether it wants to restrict exemptions during the last several days of trading in a delivery month. Acceptable procedures for obtaining and granting exemptions include a requirement that the contract market approve a specific maximum higher level.

(8) Finally, an acceptable speculative limit program should have specific policies for taking regulatory action once a violation of a position limit or exemption is detected. The contract market policy should consider appropriate actions, regardless of whether the violation is by a non-member or member, and should address traders carrying accounts through more than one intermediary.

(9) A violation of contract market position limits that have been approved by the Commission is also a violation of section 4a(e) of the Act. The Commission will consider for approval all contract market position limit rules.

Core Principle 6 of section 5(d) of the Act: *EMERGENCY AUTHORITY—The board of trade shall adopt rules to provide for the exercise of emergency authority, in consultation or cooperation with the Commission, where necessary and appropriate, including the authority to—(A) liquidate or transfer open positions in any contract; (B) suspend or curtail trading in any contract; and (C) require market participants in any contract to meet special margin requirements.*

(a) *Application guidance.* A designated contract market should have clear procedures and guidelines for contract market decision-making regarding emergency intervention in the market, including procedures and guidelines to avoid conflicts of interest while carrying out such decision-making. A contract market should also have the authority to intervene as necessary to maintain markets with fair and orderly trading as well as procedures for carrying out the intervention. Procedures and guidelines should also include notifying the Commission of the exercise of a contract market's regulatory emergency authority, minimizing conflicts of interest, and documenting the contract market's decision-making process and the reasons for using its emergency action authority. Information on steps taken under such procedures should be included in a submission of a certified rule under § 40.6 of this chapter and any related submissions for rule approval pursuant to § 40.5 of this chapter, when carried out pursuant to a contract market's emergency authority.

(b) *Acceptable practices.* As is necessary to address perceived market threats, the contract market, among other things, should be able to impose position limits in particular in the delivery month, impose or modify price limits, modify circuit breakers, call for additional margin either from customers or clearing members, order the liquidation or transfer of open positions, order the fixing of a settlement price, order a reduction in positions, extend or shorten the expiration date or the trading hours, suspend or curtail trading on the market, order the transfer of customer contracts and the margin for such contracts from one member including non-intermediated market participants of the contract market to another, or alter the delivery terms or conditions, or, if applicable, should provide for such actions through its agreements with its third-party provider of clearing services.

Core Principle 7 of section 5(d) of the Act: *AVAILABILITY OF GENERAL INFORMATION—The board of trade shall make available to market authorities, market participants, and the public information concerning—(A) the terms and conditions of the contracts of the contract market; and (B) the mechanisms for executing transactions on or through the facilities of the contract market.*

(a) *Application guidance.* A designated contract market should have arrangements and resources for the disclosure of contract terms and conditions and trading mechanisms to the Commission, market participants and the public. Procedures should also include providing information on listing new products, rule amendments or other changes to previously disclosed information to the Commission, market participants and the public. Provision of all such information to market participants and the public could be by timely placement of the information on a contract market's web site.

(b) *Acceptable practices.* [Reserved]

Core Principle 8 of section 5(d) of the Act: *DAILY PUBLICATION OF TRADING INFORMATION—The board of trade shall make public daily information on settlement prices, volume, open interest, and opening and closing ranges for actively traded contracts on the contract market.*

(a) *Application guidance.* A contract market should provide to the public information regarding settlement prices, price range, volume, open interest and other related market information for all actively traded contracts, as determined by the Commission, on a fair, equitable and timely basis. The Commission believes that section 5(d)(8) requires contract markets to publicize trading information for any non-dormant contract. Provision of information for any applicable contract could be through such means as provision of the information to a financial information service and by timely placement of the information on a contract market's web site.

(b) *Acceptable practices.* [Reserved]

Core Principle 9 of section 5(d) of the Act: *EXECUTION OF TRANSACTIONS—The board of trade shall provide a competitive, open, and efficient market and mechanism for executing transactions.*

(a) *Application guidance.* (1) A competitive, open and efficient market and mechanism for executing transactions includes a board of trade's methodology for entering orders and executing transactions.

(2) Appropriate objective testing and review of any automated systems should occur initially and periodically to ensure proper system functioning, adequate capacity and security. A designated contract market's analysis of its automated system should address appropriate principles for the oversight of automated systems, ensuring proper system function, adequate capacity and security. The Commission believes that the guidelines issued by the International Organization of Securities Commissions (IOSCO) in 1990 (which have been referred to as the ''Principles for Screen-Based Trading Systems''), and adopted by the Commission on November 21, 1990 (55 FR 48670), as supplemented in October 2000, are appropriate guidelines for a designated contract market to apply to electronic trading systems. Any program of objective testing and review of the system should be performed by a qualified independent professional. The Commission believes that information gathered by analysis, oversight or any program of objective testing and review of any automated systems regarding system functioning, capacity and security should be made available to the Commission.

(3) A designated contract market that determines to allow block trading should ensure that the block trading does not operate in a manner that compromises the integrity of prices or price discovery on the relevant market.

(b) *Acceptable practices.* A professional that is a certified member of the Information Systems Audit and Control Association experienced in the industry would be an example of an acceptable party to carry out testing and review of an electronic trading system.

Core Principle 10 of section 5(d) of the Act: *TRADE INFORMATION—The board of trade shall maintain rules and procedures to provide for the recording and safe storage of all identifying trade information in a manner that enables the contract market to use the information for purposes of assisting in the prevention of customer and market abuses and providing evidence of any violations of the rules of the contract market.*

(a) *Application guidance.* A designated contract market should have arrangements and resources for recording of full data entry and trade details and the safe storage of audit trail data. A designated contract market should have systems sufficient to enable the

contract market to use the information for purposes of assisting in the prevention of customer and market abuses through reconstruction of trading.

(b) *Acceptable practices.* (1) The goal of an audit trail is to detect and deter customer and market abuse. An effective contract market audit trail should capture and retain sufficient trade-related information to permit contract market staff to detect trading abuses and to reconstruct all transactions within a reasonable period of time. An audit trail should include specialized electronic surveillance programs that would identify potentially abusive trades and trade patterns, including, for instance, withholding or disclosing customer orders, trading ahead, and preferential allocation. An acceptable audit trail must be able to track a customer order from time of receipt through fill allocation or other disposition. The contract market must create and maintain an electronic transaction history database that contains information with respect to transactions executed on the designated contract market.

(2) An acceptable audit trail should include the following: original source documents, transaction history, electronic analysis capability, and safe storage capability. A contract market whose audit trail satisfies the following acceptable practices would satisfy Core Principle 10.

(i) Original source documents. Original source documents include unalterable, sequentially identified records on which trade execution information is originally recorded, whether recorded manually or electronically. For each customer order (whether filled, unfilled or cancelled, each of which should be retained or electronically captured), such records reflect the terms of the order, an account identifier that relates back to the account(s) owner(s), and the time of order entry. (For floor-based contract markets, the time of report of execution of the order should also be captured.)

(ii) Tansaction history. A transaction history which consists of an electronic history of each transaction, including (a) all data that are input into the trade entry or matching system for the transaction to match and clear; (b) the categories of participants for which such trades are executed, including whether the person executing a trade was executing it for his/her own account or an account for which he/she has discretion, his/her clearing member's house account, the account of another member, including market participants present on the floor, or the account of any other customer; (c) timing and sequencing data adequate to reconstruct trading; and (d) the identification of each account to which fills are allocated.

(iii) Electronic analysis capability. An electronic analysis capability that permits sorting and presenting data included in the transaction history so as to reconstruct trading and to identify possible trading violations with respect to both customer and market abuse.

(iv) Safe storage capability. Safe storage capability provides for a method of storing the data included in the transaction history in a manner that protects the data from unauthorized alteration, as well as from accidental erasure or other loss. Data should be retained in accordance with the recordkeeping standards of Core Principle 17.

Core Principle 11 of section 5(d) of the Act: *FINANCIAL INTEGRITY OF CONTRACTS—The board of trade shall establish and enforce rules providing for the financial integrity of any contracts traded on the contract market (including the clearance and settlement of the transactions with a derivatives clearing organization), and rules to ensure the financial integrity of any futures commission merchants and introducing brokers and the protection of customer funds.*

(a) *Application guidance.* Clearing of transactions executed on a designated contract market other than transactions in security futures products, should be provided through a Commission-registered derivatives clearing organization. In addition, a designated contract market should maintain the financial integrity of its transactions by maintaining minimum financial standards for its members and non-intermediated market participants and by having default rules and procedures. The minimum financial standards should be monitored for compliance purposes. The Commission believes that in order to monitor for minimum financial requirements, a designated contract market should routinely receive and promptly review financial and related information from its members. Rules concerning the protection of customer funds should address the segregation of customer and proprietary funds, the custody of customer funds, the investment standards for customer funds, related recordkeeping and related intermediary default procedures. The contract market should audit its members that are intermediaries for compliance with the foregoing rules as well as applicable Commission rules. These audits should be conducted consistent with the guidance set forth in Division of Trading and Markets Interpretations 4–1 and 4–2. A contract market may delegate to a designated self-regulatory organization responsibility for receiving financial reports and for conducting compliance audits pursuant to the guidelines set forth in § 1.52 of this chapter.

(b) *Acceptable Practices.* [Reserved]

Core Principle 12 of section 5(d) of the Act: *PROTECTION OF MARKET PARTICIPANTS—The board of trade shall establish and enforce rules to protect market participants from abusive practices committed by any party acting as an agent for the participants.*

(a) *Application guidance.* A designated contract market should have rules prohibiting conduct by intermediaries that is fraudulent, noncompetitive, unfair, or an abusive practice in connection with the execution of trades and a program to detect and discipline such behavior. The contract market should have methods and resources appropriate to the nature of the trading system and the structure of the market to detect trade practice abuses.

(b) *Acceptable practices.* [Reserved]

Core Principle 13 of section 5(d) of the Act: *DISPUTE RESOLUTION—The board of trade shall establish and enforce rules regarding and provide facilities for alternative dispute resolution as appropriate for market participants and any market intermediaries.*

(a) *Application guidance.* A designated contract market should provide customer dispute resolution procedures that are fair and equitable and make them available on a voluntary basis, either directly or through another self-regulatory organization, to customers that are non-eligible contract participants.

(b) *Acceptable practices.* (1) Under Core Principle 13, a designated contract market is required to provide for dispute resolution mechanisms that are appropriate to the nature of the market.

(2) In order to satisfy acceptable standards, a designated contract market should provide a customer dispute resolution mechanism that is fundamentally fair and is equitable. An acceptable customer dispute resolution mechanism would:

(i) Provide the customer with an opportunity to have his or her claim decided by an objective and impartial decision-maker,

(ii) Provide each party with the right to be represented by counsel, at the party's own expense,

(iii) Provide each party with adequate notice of the claims presented against him or her, an opportunity to be heard on all claims, defenses and permitted counterclaims, and an opportunity for a prompt hearing,

(iv) Authorize prompt, written, final settlement awards that are not subject to appeal within the contract market, and

(v) Notify the parties of the fees and costs that may be assessed.

(3) The use of such procedures should be voluntary for customers who are not eligible contract participants, and could permit counterclaims as provided in § 166.5 of this chapter.

(4) If the designated contract market also provides a procedure for the resolution of disputes that do not involve customers (*i.e.*, member-to-member disputes), the procedure for resolving such disputes must be independent of and shall not interfere with or delay the resolution of customers' claims or grievances.

(5) A designated contract market may delegate to another self-regulatory organization or to a registered futures association its responsibility to provide for customer dispute resolution mechanisms, provided, however, that, if the designated contract market does delegate that responsibility, the contract market shall in all respects treat any decision issued by such other organization or association as if the decision were its own including providing for the appropriate enforcement of any award issued against a delinquent member.

Core Principle 14 of section 5(d) of the Act: *GOVERNANCE FITNESS STANDARDS—The board of trade shall establish and enforce appropriate fitness standards for directors, members of any disciplinary committee, members of the contract market, and any other persons with direct access to the facility (including any parties affiliated with any of the persons described in this core principle).*

(a) *Application guidance.* (1) A designated contract market should have appropriate eligibility criteria for the categories of

persons set forth in the Core Principle that should include standards for fitness and for the collection and verification of information supporting compliance with such standards. Minimum standards of fitness for persons who have member voting privileges, governing obligations or responsibilities, or who exercise disciplinary authority are those bases for refusal to register a person under section 8a(2) of the Act. In addition, persons who have governing obligations or responsibilities, or who exercise disciplinary authority, should not have a significant history of serious disciplinary offenses, such as those that would be disqualifying under § 1.63 of this chapter. Members with trading privileges but having no, or only nominal, equity, in the facility and non-member market participants who are not intermediated and do not have these privileges, obligations, responsibilities or disciplinary authority could satisfy minimum fitness standards by meeting the standards that they must meet to qualify as a ''market participant.'' Natural persons who directly or indirectly have greater than a ten percent ownership interest in a designated contract market should meet the fitness standards applicable to members with voting rights.

(2) The Commission believes that such standards should include providing the Commission with fitness information for such persons, whether registration information, certification to the fitness of such persons, an affidavit of such persons' fitness by the contract market's counsel or other information substantiating the fitness of such persons. If a contract market provides certification of the fitness of such a person, the Commission believes that such certification should be based on verified information that the person is fit to be in his or her position.

(b) *Acceptable practices.* [Reserved]

Core Principle 15 of section 5(d) of the Act: *CONFLICTS OF INTEREST—The board of trade shall establish and enforce rules to minimize conflicts of interest in the decision making process of the contract market and establish a process for resolving such conflicts of interest.*

(a) *Application guidance.* The means to address conflicts of interest in decision-making of a contract market should include methods to ascertain the presence of conflicts of interest and to make decisions in the event of such a conflict. In addition, the Commission believes that the contract market should provide for appropriate limitations on the use or disclosure of material non-public information gained through the performance of official duties by board members, committee members and contract market employees or gained through an ownership interest in the contract market.

(b) *Acceptable practices.* [Reserved]

Core Principle 16 of section 5(d) of the Act: *COMPOSITION OF BOARDS OF MUTUALLY OWNED CONTRACT MARKETS—In the case of a mutually owned contract market, the board of trade shall ensure that the composition of the governing board reflects market participants.*

(a) *Application guidance.* The composition of a mutually-owned contract market should fairly represent the diversity of interests of the contract market's market participants.

(b) *Acceptable practices.* [Reserved]

Core Principle 17 of section 5(d) of the Act: *RECORDKEEPING—The board of trade shall maintain records of all activities related to the business of the contract market in a form and manner acceptable to the Commission for a period of 5 years.*

(a) *Application guidance.* [Reserved]

(b) *Acceptable practices.* Section 1.31 of this chapter governs recordkeeping obligations under the Act and the Commission's regulations thereunder. In order to provide broad flexible performance standards for recordkeeping, § 1.31 was updated and amended by the Commission in 1999. Accordingly, § 1.31 itself establishes the guidance regarding the form and manner for keeping records.

Core Principle 18 of section 5(d) of the Act: *ANTITRUST CONSIDERATIONS—Unless necessary or appropriate to achieve the purposes of this Act, the board of trade shall endeavor to avoid—(A) adopting any rules or taking any actions that result in any unreasonable restraints of trade; or (B) imposing any material anticompetitive burden on trading on the contract market.*

(a) *Application guidance.* An entity seeking designation as a contract market may request that the Commission consider under the provisions of section 15(b) of the Act any of the entity's rules, including trading protocols or policies, and including both operational rules and the terms or conditions of products listed for trading, at the time of designation or thereafter. The Commission intends to apply section 15(b) of the Act to its consideration of issues under this core principle in a manner consistent with that previously applied to contract markets.

(b) *Acceptable practices.* [Reserved]

11. Chapter I of 17 CFR is amended by adding new Part 40 as follows:

PART 40—PROVISIONS COMMON TO CONTRACT MARKETS, DERIVATIVES TRANSACTION EXECUTION FACILITIES AND DERIVATIVES CLEARING ORGANIZATIONS

Sec.

40.1 Definitions.
40.2 Listing products for trading by certification.
40.3 Voluntary submission of new products for Commission review and approval.
40.4 Amendments to terms or conditions of enumerated agricultural contracts.
40.5 Voluntary submission of rules for Commission review and approval.
40.6 Self-certification of rules by designated contract markets and registered derivatives clearing organizations.
40.7 Delegations.

Appendix A to Part 40 [Reserved]

Appendix B to Part 40—Schedule of fees.

Appendix C to Part 40 [Reserved]

Authority: 7 U.S.C. 1a, 2, 5, 6, 6c, 7, 7a, 8 and 12a, as amended by the Commodity Futures Modernization Act of 2000, Appendix E of Pub. L. No. 106–554, 114 Stat. 2763 (2000).

§ 40.1 Definitions.

As used in this part:

Dormant contract means any commodity futures or option contract or other instrument in which no trading has occurred in any future or option expiration for a period of six complete calendar months; provided, however, no contract or instrument shall be considered to be dormant until the end of sixty complete calendar months following initial listing.

Emergency means any occurrence or circumstance which, in the opinion of the governing board of the contract market or derivatives transaction execution facility, requires immediate action and threatens or may threaten such things as the fair and orderly trading in, or the liquidation of or delivery pursuant to, any agreements, contracts or transactions on such a trading facility, including any manipulative or attempted manipulative activity; any actual, attempted, or threatened corner, squeeze, congestion, or undue concentration of positions; any circumstances which may materially affect the performance of agreements, contracts or transactions traded on the trading facility, including failure of the payment system or the bankruptcy or insolvency of any participant; any action taken by any governmental body, or any other board of trade, market or facility which may have a direct impact on trading on the trading facility; and any other circumstance which may have a severe, adverse effect upon the functioning of a designated contract market or derivatives transaction execution facility.

Rule means any constitutional provision, article of incorporation, bylaw, rule, regulation, resolution, interpretation, stated policy, term and condition, trading protocol, agreement or instrument corresponding thereto, in whatever form adopted, and any amendment or addition thereto or repeal thereof, made or issued by a contract market, derivatives transaction execution facility or derivatives clearing organization or by the governing board thereof or any committee thereof.

Terms and conditions mean any definition of the trading unit or the specific commodity underlying a contract for the future delivery of a commodity or commodity option contract, specification of settlement or delivery standards and procedures, and establishment of buyers' and sellers' rights and obligations under the contract. Terms and conditions include provisions relating to the following:

(1) Quality or quantity standards for a commodity and any applicable premiums or discounts;

(2) Trading hours, trading months and the listing of contracts;

(3) Minimum and maximum price limits and the establishment of settlement prices;

(4) Position limits and position reporting requirements;

(5) Delivery points and locational price differentials;

(6) Delivery standards and procedures, including alternatives to delivery and applicable penalties or sanctions for failure to perform;

(7) Settlement of the contract; and

(8) Payment or collection of commodity option premiums or margins.

§ 40.2 Listing products for trading by certification.

To list a new product for trading, to list a product for trading that has become dormant, or to accept for clearing a product (not traded on a designated contract market or a registered derivatives transaction execution facility), a registered entity must file with the Secretary of the Commission at its Washington, D.C., headquarters no later than the close of business of the business day preceding the product's listing or acceptance for clearing, either in electronic or hard-copy form, a copy of the product's rules, including its terms and conditions, or the rules establishing the terms and conditions of products that make them acceptable for clearing, and a certification by the registered entity that the trading product or other instrument, or the clearing of the trading product or other instrument including any rules establishing the terms and conditions of products that make them acceptable for clearing), complies with the Act and rules thereunder.

§ 40.3 Voluntary submission of new products for Commission review and approval.

(a) *Request for approval.* A designated contract market or registered derivatives transaction execution facility may request under section 5c(c)(2) of the Act that the Commission approve new products under the following procedures:

(1) The submitting entity labels the request as ''Request for Commission Product Approval'';

(2) The request for product approval is for a commodity other than a security future or a security futures product as defined in sections 1a(31) or 1a(32) of the Act, respectively;

(3) The submission complies with the requirements of Appendix A to this part—Guideline No. 1;

(4) The submission includes the fee required under Appendix B to this part.

(b) *Forty-five day review.* All products submitted for Commission approval under this paragraph shall be deemed approved by the Commission forty-five days after receipt by the Commission, or at the conclusion of such extended period as provided under paragraph (c) of this section, unless notified otherwise within the applicable period, if:

(1) The submission complies with the requirements of paragraph (a) of this section; and

(2) The submitting entity does not amend the terms or conditions of the product or supplement the request for approval, except as requested by the Commission or for correction of typographical errors, renumbering or other such nonsubstantive revisions, during that period. Any voluntary, substantive amendment by the submitting entity will be treated as a new submission under this section.

(c) *Extension of time.* The Commission may extend the forty-five day review period in paragraph (b) of this section for:

(1) An additional forty-five days, if within the initial forty-five day review period, the Commission notifies the submitting entity that the product raises novel or complex issues that require additional time for review or is of major economic significance. This notification shall briefly describe the nature of the specific issues for which additional time for review is required; or

(2) Such period as the submitting entity so instructs the Commission in writing.

(d) *Notice of non-approval.* The Commission at any time during its review under this section may notify the submitting entity that it will not, or is unable to, approve the product or instrument. This notification will briefly specify the nature of the issues raised and the specific provision of the Act or regulations, including the form or content requirements of paragraph (a) of this section, that the product would violate, appears to violate or the violation of which cannot be ascertained from the submission.

(e) *Effect of non-approval.* (1) Notification to a submitting entity under paragraph (d) of this section of the Commission's refusal to approve a product or instrument does not prejudice the entity from subsequently submitting a revised version of the product or instrument for Commission approval or from submitting the product or instrument as initially proposed pursuant to a supplemented submission.

(2) Notification to a submitting entity under paragraph (d) of this section of the Commission's refusal to approve a product shall be presumptive evidence that the entity may not truthfully certify under § 40.2 that the same, or substantially the same, product does not violate the Act or rules thereunder.

§ 40.4 Amendments to terms or conditions of enumerated agricultural contracts.

(a) Designated contract markets must submit for Commission approval under the procedures of § 40.5, prior to its implementation, any rule or rule amendment that, for a delivery month having open interest, would materially change a term or condition as defined in § 40.1(f), of a contract for future delivery in an agricultural commodity enumerated in section 1a(4) of the Act, or of an option on such a contract or commodity.

(b) The following rules or rule amendments are not material changes:

(1) Changes in trading hours;

(2) Changes in lists of approved delivery facilities pursuant to previously set standards or criteria;

(3) Changes to terms and conditions of options on futures other than those relating to last trading day, expiration date, option strike price delistings, and speculative position limits;

(4) Reductions in the minimum price fluctuation (or ''tick'');

(5) Changes required to comply with a binding order of a court of competent jurisdiction, or of a rule, regulation or order of the Commission or of another Federal regulatory authority; and

(6) Any other rule, the text of which has been submitted to the Secretary of the Commission at least ten days prior to its implementation at its Washington, D.C. headquarters and that has been labeled ''Non-material Agricultural Rule Change,'' and with respect to which the Commission has not notified the contract market during that period that the rule appears to require or does require prior approval under this section.

§ 40.5 Voluntary submission of rules for Commission review and approval.

(a) *Request for approval of rules.* A registered entity may request pursuant to section 5c(c) of the Act that the Commission approve any rule or proposed rule or rule amendment under the following procedures:

(1) Three copies of each rule or rule amendment submission under this section shall be furnished in hard copy form to the Secretary of the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581 or electronically in a format specified by the Secretary of the Commission. One copy of each submission shall be transmitted by the registered entity to the regional office of

the Commission having local jurisdiction over the registered entity. Each request for approval under this section shall be in the following order and shall:

(i) Label the submission as ''Request for Commission rule approval'';

(ii) Set forth the text of the rule or proposed rule (in the case of a rule amendment, deletions and additions must be indicated);

(iii) Describe the proposed effective date of a proposed rule and any action taken or anticipated to be taken to adopt the proposed rule by the registered entity or by its governing board or by any committee thereof, and cite the rules of the entity that authorize the adoption of the proposed rule;

(iv) Explain the operation, purpose, and effect of the proposed rule, including, as applicable, a description of the anticipated benefits to market participants or others, any potential anticompetitive effects on market participants or others, how the rule fits into the registered entity's framework of self-regulation, and any other information which may be beneficial to the Commission in analyzing the proposed rule. If a proposed rule affects, directly or indirectly, the application of any other rule of the submitting entity, set forth the pertinent text of any such rule and describe the anticipated effect;

(v) Note and briefly describe any substantive opposing views expressed with respect to the proposed rule that were not incorporated into the proposed rule prior to its submission to the Commission; and

(vi) Identify any Commission regulation that the Commission may need to amend, or sections of the Act or Commission regulations that the Commission may need to interpret in order to approve or allow into effect the proposed rule. To the extent that such an amendment or interpretation is necessary to accommodate a proposed rule, the submission should include a reasoned analysis supporting the amendment or interpretation of the Commission's regulation.

(2) [Reserved]

(b) *Forty-five day review.* All rules submitted for Commission approval under paragraph (a) of this section shall be deemed approved by the Commission under section 5c(c) of the Act, forty-five days after receipt by the Commission, or at the conclusion of such extended period as provided under paragraph (c) of this section, unless notified otherwise within the applicable period, if:

(1) The submission complies with the requirements of paragraphs (a)(1)(i) through (vi) of this section, and

(2) The submitting entity does not amend the proposed rule or supplement the submission, except as requested by the Commission, during the pendency of the review period. Any amendment or supplementation not requested by the Commission will be treated as the submission of a new filing under this section.

(c) *Extensions of time.* The Commission may extend the review period in paragraph (b) of this section for:

(1) An additional thirty days, if the Commission, within the initial forty-five day review period, notifies the submitting entity that the proposed rule raises novel or complex issues that require additional time for review or is of major economic significance. This notification shall briefly describe the nature of the specific issues for which additional time for review is required; or

(2) Such additional period as the submitting entity has so instructed the Commission in writing.

(d) *Notice of non-approval.* The Commission at any time during its review under this section may notify the submitting entity that it will not, or is unable to, approve the proposed rule or rule amendment. This notification will briefly specify the nature of the issues raised and the specific provision of the Act or regulations, including the form or content requirements of this section, that the proposed rule would violate, appears to violate or the violation of which cannot be ascertained from the submission.

(e) *Effect of non-approval.* (1) Notification to a registered entity under paragraph (d) of this section of the Commission's refusal to approve a proposed rule or rule amendment of a registered entity does not prejudice the entity from subsequently submitting a revised version of the proposed rule or rule amendment for Commission approval or from submitting the rule or rule amendment as initially proposed pursuant to a supplemented submission.

(2) Notification to a registered entity under paragraph (d) of this section of the Commission's refusal to approve a proposed rule or rule amendment of a registered entity shall be presumptive evidence that the entity may not truthfully certify that the same, or substantially the same, proposed rule or rule amendment does not violate the Act or rules thereunder.

(f) *Expedited approval.* Notwithstanding the provisions of paragraph (b) of this section, changes to terms and conditions of a product that are consistent with the Act and Commission regulations and with standards approved or established by the Commission in a written notification to the registered entity of the applicability of this paragraph (f) shall be deemed approved by the Commission at such time and under such conditions as the Commission shall specify in the notice, provided, however, that the Commission may, at any time, alter or revoke the applicability of such a notice to any particular product.

§ 40.6 Self-certification of rules by designated contract markets and registered derivatives clearing organizations.

(a) *Required certification.* A designated contract market or a registered derivatives clearing organization may implement any new rule or rule amendment (other than a rule or rule amendment approved or deemed approved by the Commission under § 40.5) only if:

(1) The rule or rule amendment is not a rule or rule amendment of a designated contract market that materially changes a term or condition of a contract for future delivery of an agricultural commodity enumerated in section 1a(4) of the Act or an option on such a contract or commodity in a delivery month having open interest;

(2) The designated contract market or registered derivatives clearing organization has filed a submission for the rule or rule amendment with the Commission at its Washington, D.C. headquarters and at the regional office having local jurisdiction, and the Commission has received the submission at its headquarters by close of business on the business day preceding implementation of the rule; *provided, however,* rules or rule amendments implemented under procedures of the governing board to respond to an emergency as defined in § 40.1(d), shall, if practicable, be filed with the Commission prior to the implementation or, if not practicable, be filed with the Commission at the earliest possible time after implementation but in no event more than 24 hours after implementation; and

(3) The rule submission includes:

(i) The label, ''Rule Certification'' or, in the case of a rule or rule amendment that responds to an emergency, ''Emergency Rule Certification'';

(ii) The text of the rule (in the case of a rule amendment, deletions and additions must be indicated);

(iii) The date of implementation;

(iv) A brief explanation of any substantive opposing views not incorporated into the rule; and

(v) A certification by the entity that the rule complies with the Act and regulations thereunder.

(b) *Stay.* The Commission may stay the effectiveness of a rule implemented pursuant to paragraph (a) of this section during the pendency of Commission proceedings for filing a false certification or to alter or amend the rule pursuant to section 8a(7) of the Act. The decision to stay the effectiveness of a rule in such circumstances shall not be delegable to any employee of the Commission.

(c) *Notification of rule amendments.* Notwithstanding the rule certification requirement of section 5c(c)(1) of the Act, and paragraphs (a)(2) and (a)(3) of this section, a designated contract market or a registered derivatives clearing organization may place the following rules or rule amendments into effect without certification to the Commission if the following conditions are met:

(1) The designated contract market or registered derivatives clearing organization provides to the Commission at least weekly a summary notice of all rule changes made effective pursuant to this paragraph during the preceding week. Such notice must be labeled ''Weekly Notification of Rule Changes'' and need not be filed for weeks during which no such actions have been taken. One copy of each such submission shall be furnished in hard copy to the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581, or electronically in a format specified by the Secretary of the Commission; and

(2) The rule governs:

(i) *Nonmaterial revisions.* Corrections of typographical errors, renumbering, periodic routine updates to identifying information about approved entities and other such nonsubstantive revisions of a product's terms and conditions that have no effect on the economic characteristics of the product;

(ii) *Delivery standards set by third parties.* Changes to grades or standards of commodities deliverable on a product that are established by an independent third party and that are incorporated by reference as product terms, provided that the grade or standard is not established, selected or calculated solely for use in connection with futures or option trading and such changes do not affect deliverable supplies or the pricing basis for the product;

(iii) *Index products.* Routine changes in the composition, computation, or method of selection of component entities of an index (other than a stock index) referenced and defined in the product's terms, that do not affect the pricing basis of the index, which are made by an independent third party whose business relates to the collection or dissemination of price information and that was not formed solely for the purpose of compiling an index for use in connection with a futures or option product; or

(iv) *Option contract terms.* Changes to option contract rules relating to the strike price listing procedures, strike price intervals, and the listing of strike prices on a discretionary basis.

(3) *Notification of rule amendments not required.* Notwithstanding the rule certification requirements of section 5c(c)(1) of the Act and of paragraphs (a)(2) and (a)(3) of this section, designated contract markets and registered derivatives clearing organizations may place the following rules or rule amendments into effect without certification or notice to the Commission if the following conditions are met:

(i) The designated contract market or registered derivatives clearing organization maintains documentation regarding all changes to rules; and

(ii) The rule governs:

(A) *Transfer of membership or ownership.* Procedures and forms for the purchase, sale or transfer of membership or ownership, but not including qualifications for membership or ownership, any right or obligation of membership or ownership or dues or assessments;

(B) *Administrative procedures.* The organization and administrative procedures of a contract market's governing bodies such as a Board of Directors, Officers and Committees, but not voting requirements, Board of Directors or Committee composition requirements, or procedures or requirements relating to conflicts of interest;

(C) *Administration.* The routine, daily administration, direction and control of employees, requirements relating to gratuity and similar funds, but not guaranty, reserves, or similar funds; declaration of holidays, and changes to facilities housing the market, trading floor or trading area; and

(D) *Standards of decorum.* Standards of decorum or attire or similar provisions relating to admission to the floor, badges, or visitors, but not the establishment of penalties for violations of such rules.

§ 40.7 Delegations.

(a) *Procedural matters.*

(1) *Review of products or rules.* The Commission hereby delegates, until it orders otherwise, to the Director of the Division of Trading and Markets and separately to the Director of Economic Analysis or to the Director's delegatee with the concurrence of the General Counsel or the General Counsel's delegatee, authority to request under § 40.3(b)(2) or § 40.5(b)(2) that the entity requesting approval amend the proposed product, rule or rule amendment or supplement the submission, to notify a submitting entity under § 40.3(c) or § 40.5(c) that the time for review has been extended, and to notify the submitting entity under § 40.3(d) or § 40.5(d) that the Commission is not approving, or is unable to approve, the proposed product, rule or rule amendment.

(2) *Emergency rules.* The Commission hereby delegates authority to the Director of the Division of Trading and Markets, or the delegatees of the Director, authority to receive notification and the required certification of emergency rules under § 40.6(a)(2).

(b) *Approval authority.* The Commission hereby delegates, until the Commission orders otherwise, to the Director of the Division of Trading and Markets and separately to the Director of Economic Analysis, with the concurrence of the General Counsel or the General Counsel's delegatee, to be exercised by either of such Directors or by such other employee or employees of the Commission under the supervision of such Directors as may be designated from time to time by the Directors, the authority to approve, pursuant to section 5c(c)(3) of the Act and § 40.5, rules or rule amendments of a designated contract market, registered derivatives transaction execution facility or registered derivatives clearing organization that:

(1) Relate to, but do not materially change, the quantity, quality, or other delivery specifications, procedures, or obligations for delivery, cash settlement, or exercise under an agreement, contract or transaction approved for trading by the Commission; daily settlement prices; clearing position limits; requirements or procedures for governance of a registered entity; procedures for transfer trades; trading hours; minimum price fluctuations; and maximum price limit and trading suspension provisions;

(2) Reflect routine modifications that are required or anticipated by the terms of the rule of a registered entity;

(3) [Reserved].

(4) Are in substance the same as a rule of the same or another registered entity which has been approved previously by the Commission pursuant to section 5c(c)(3) of the Act;

(5) Are consistent with a specific, stated policy or interpretation of the Commission; or

(6) Relate to the listing of additional trading months of approved contracts.

(c) The Directors may submit to the Commission for its consideration any matter that has been delegated pursuant to paragraph (a) or (b) of this section.

(d) Nothing in this section shall be deemed to prohibit the Commission, at its election, from exercising the authority delegated in paragraph (a) or (b) of this section to the Directors.

Appendix A to Part 40 [Reserved]

Appendix B to Part 40—Schedule of Fees

(a) *Applications for product approval.* Each application for product approval under § 40.3 must be accompanied by a check or money order made payable to the Commodity Futures Trading Commission in an amount to be determined annually by the Commission and published in the **Federal Register**.

(b) Checks and applications should be sent to the attention of the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. No checks or money orders may be accepted by personnel other than those in the Office of the Secretariat.

(c) Failure to submit the fee with an application for product approval will result in return of the application. Fees will not be returned after receipt.

Appendix C to Part 40 [Reserved]

Appendix A to Part 5 [Redesignated as] Appendix A to Part 40

Appendix E to Part 5 [Redesignated as] Appendix C to Part 40

PART 5—[REMOVED AND RESERVED]

12. Appendix A to Part 5 is redesignated as Appendix A to Part 40 and the heading is revised; Appendix E to Part 5 is redesignated as Appendix C to Part 40; and Part 5 is removed and reserved. The revised heading reads as follows:

Appendix A to Part 40—Guideline No. 1

13. Chapter I of 17 CFR is amended by adding new Part 41 as follows:

PART 41—SECURITY FUTURES

41.1 [Reserved]

PART 166—CUSTOMER PROTECTION RULES

14. The authority citation for Part 166 is revised to read as follows:

Authority: 7 U.S.C. 1a, 2, 6b, 6c, 6d, 6g, 6h, 6k, 6l, 6o, 7, 12a, 21, and 23, as amended by the Commodity Futures Modernization Act of 2000, Appendix E of Pub. L. 106–554, 114 Stat. 2763 (2000).

15. Section 166.5 is added to read as follows:

§ 166.5 Dispute settlement procedures.

(a) *Definitions.* (1) The term *claim or grievance* as used in this section shall mean any dispute that:

(i) Arises out of any transaction executed on or subject to the rules of a designated contract market,

(ii) Is executed or effected through a member of such facility, a participant transacting on or through such facility or an employee of such facility, and

(iii) Does not require for adjudication the presence of essential witnesses or third parties over whom the facility does not have jurisdiction and who are not otherwise available.

(iv) The term claim or grievance does not include disputes arising from cash market transactions that are not a part of or directly connected with any transaction for the purchase or sale of any commodity for future delivery or commodity option.

(2) The term *customer* as used in this section includes an option customer (as defined in § 1.3(jj) of this chapter) and any person for or on behalf of whom a member of a designated contract market, or a participant transacting on or through such designated contract market, effects a transaction on such contract market, except another member of or participant in such designated contract market. *Provided, however*, a person who is an ''eligible contract participant'' as defined in section 1a(12) of the Act shall not be deemed to be a customer within the meaning of this section.

(3) The term *Commission registrant* as used in this section means a person registered under the Act as a futures commission merchant, introducing broker, floor broker, commodity pool operator, commodity trading advisor, or associated person.

(b) *Voluntariness.* The use by customers of dispute settlement procedures shall be voluntary as provided in paragraphs (c) and (g) of this section.

(c) *Customers.* No Commission registrant shall enter into any agreement or understanding with a customer in which the customer agrees, prior to the time a claim or grievance arises, to submit such claim or grievance to any settlement procedure except as follows:

(1) Signing the agreement must not be made a condition for the customer to utilize the services offered by the Commission registrant.

(2) If the agreement is contained as a clause or clauses of a broader agreement, the customer must separately endorse the clause or clauses containing the cautionary language and provisions specified in this section. A futures commission merchant or introducing broker may obtain such endorsement as provided in § 1.55(d) of this chapter for the following classes of customers only:

(i) A plan defined as a government plan or church plan in section 3(32) or section 3(33) of title I of the Employee Retirement Income Security Act of 1974 or a foreign person performing a similar role or function subject as such to comparable foreign regulation; and

(ii) A person who is a ''qualified eligible participant'' or a ''qualified eligible client'' as defined in § 4.7 of this chapter.

(3) The agreement may not require any customer to waive the right to seek reparations under section 14 of the Act and part 12 of this chapter. Accordingly, such customer must be advised in writing that he or she may seek reparations under section 14 of the Act by an election made within 45 days after the Commission registrant notifies the customer that arbitration will be demanded under the agreement. This notice must be given at the time when the Commission registrant notifies the customer of an intention to arbitrate. The customer must also be advised that if he or she seeks reparations under section 14 of the Act and the Commission declines to institute reparations proceedings, the claim or grievance will be subject to the pre-existing arbitration agreement and must also be advised that aspects of the claim or grievance that are not subject to the reparations procedure (*i.e.*, do not constitute a violation of the Act or rules thereunder) may be required to be submitted to the arbitration or other dispute settlement procedure set forth in the pre-existing arbitration agreement.

(4) The agreement must advise the customer that, at such time as he or she may notify the Commission registrant that he or she intends to submit a claim to arbitration, or at such time as such person notifies the customer of its intent to submit a claim to arbitration, the customer will have the opportunity to elect a qualified forum for conducting the proceeding.

(5) *Election of forum.* (i) Within ten business days after receipt of notice from the customer that he or she intends to submit a claim to arbitration, or at the time a Commission registrant notifies the customer of its intent to submit a claim to arbitration, the Commission registrant must provide the customer with a list of organizations whose procedures meet Acceptable Practices established by the Commission for dispute resolution, together with a copy of the rules of each forum listed. The list must include:

(A) The designated contract market, if available, upon which the transaction giving rise to the dispute was executed or could have been executed;

(B) A registered futures association; and

(C) At least one other organization that will provide the customer with the opportunity to select the location of the arbitration proceeding from among several major cities in diverse geographic regions and that will provide the customer with the choice of a panel or other decision-maker composed of at least one or more persons, of which at least a majority are not members or associated with a member of the designated contract market or employee thereof, and that are not otherwise associated with the designated contract market (mixed panel): *Provided, however,* that the list of qualified organizations provided by a Commission registrant that is a floor broker need not include a registered futures association unless a registered futures association has been authorized to act as a decision-maker in such matters.

(ii) The customer shall, within forty-five days after receipt of such list, notify the opposing party of the organization selected. A customer's failure to provide such notice shall give the opposing party the right to select an organization from the list.

(6) *Fees.* The agreement must acknowledge that the Commission registrant will pay any incremental fees that may be assessed by a qualified forum for provision of a mixed panel, unless the arbitrators in a particular proceeding determine that the customer has acted in bad faith in initiating or conducting that proceeding.

(7) *Cautionary Language.* The agreement must include the following language printed in large boldface type:

Three Forums Exist for the Resolution of Commodity Disputes: Civil Court litigation, reparations at the Commodity Futures Trading Commission (CFTC) and arbitration conducted by a self-regulatory or other private organization.

The CFTC recognizes that the opportunity to settle disputes by arbitration may in some cases provide many benefits to customers, including the ability to obtain an expeditious and final resolution of disputes without incurring substantial costs. The CFTC requires, however, that each customer individually examine the relative merits of arbitration and that your consent to this arbitration agreement be voluntary.

By signing this agreement, you: (1) May be waiving your right to sue in a court of law; and (2) are agreeing to be bound by arbitration of any claims or counterclaims which you or [name] may submit to arbitration under this agreement. You are not, however, waiving your right to elect instead to petition the CFTC to institute reparations proceedings under Section 14 of the Commodity Exchange Act with respect to any dispute that may be arbitrated pursuant to this agreement. In the event a dispute arises, you will be notified if [name] intends to submit the dispute to arbitration. If you believe a violation of the Commodity Exchange Act is involved and if you prefer to request a section 14 ''Reparations'' proceeding before the CFTC, you will have 45 days from the date of such notice in which to make that election.

You need not sign this agreement to open or maintain an account with [name]. See 17 CFR 166.5.

(d) *Enforceability.* A dispute settlement procedure may require parties utilizing such procedure to agree, under applicable state law, submission agreement or otherwise, to be bound by an award rendered in the procedure, provided that the agreement to submit the claim or grievance to the procedure was made in accordance with paragraph (c) or (g) of this section or that the agreement to submit the claim or grievance was made after the claim or grievance arose. Any award so rendered shall be enforceable in accordance with applicable law.

(e) *Time limits for submission of claims.* The dispute settlement procedure established by a designated contract market shall not include any unreasonably short limitation period foreclosing submission of customers' claims or grievances or counterclaims.

(f) *Counterclaims.* A procedure established by a designated contract market under the Act for the settlement of customers' claims or grievances against a member or employee thereof may permit the submission of a counterclaim in the procedure by a person against whom a claim or grievance is brought. The designated contract market may permit such a counterclaim where the counterclaim arises out of the transaction or occurrence that is the subject of the customer's claim or grievance and does not require for adjudication the presence of essential witnesses, parties, or third persons over whom the designated contract market does not have jurisdiction. Other counterclaims arising out of a transaction subject to the Act and rules promulgated thereunder for which the customer utilizes the services of the registrant may be permissible where the customer and the registrant have agreed in advance to require that all such submissions be included in the proceeding, and if the aggregate monetary value of the counterclaims is capable of calculation.

(g) *Eligible contract participants.* A person who is an ''eligible contract participant'' as defined in section 1a(12) of the Act may negotiate any term of an agreement or understanding with a Commission registrant in which the eligible contract participant agrees, prior to the time a claim or grievance arises, to submit such claim or grievance to any settlement procedure provided for in the agreement.

PART 170—REGISTERED FUTURES ASSOCIATIONS

16. The authority citation for Part 170 is revised to read as follows:

Authority: 7 U.S.C. 6p, 12a, and 21, as amended by the Commodity Futures Modernization Act of 2000, Appendix E of Pub. L. 106–554, 114 Stat. 2763 (2000).

17. Section 170.8 is revised to read as follows:

§ 170.8 Settlement of customer disputes (section 17(b)(10) of the Act).

A futures association must be able to demonstrate its capacity to promulgate rules and to conduct proceedings that provide a fair, equitable and expeditious procedure, through arbitration or otherwise, for the voluntary settlement of a customer's claim or grievance brought against any member of the association or any employee of a member of the association. Such rules shall conform to and be consistent with section 17(b)(10) of the Act and be consistent with the guidelines and acceptable practices for dispute resolution found within Appendix A and Appendix B to Part 38 of this chapter.

PART 180—ARBITRATION OR OTHER DISPUTE SETTLEMENT PROCEDURES

18. Part 180 is removed.

Issued in Washington, DC, this 30th day of July, 2001, by the Commission.

Jean A. Webb,

Secretary of the Commission.

Dissent of Commissioner Thomas J. Erickson Rules Implementing the Commodity Futures Modernization Act (CFMA) With Respect to Transaction Execution Facilities

I dissent from the publication of these final rules because they fall well short of the minimum standards necessary to maintain integrity of markets and protect customers from trade practice abuses. Today, the Commission promulgates final rules intended to implement the Commodity Futures Modernization Act of 2000.[1] While the Commission's rules reflect the thrust of the CFMA, they fail to recognize the discretion afforded the agency to ensure that the

[1] See Commodity Futures Modernization Act of 2000, Appendix E, Pub. L. No. 106–554, 114 Stat. 2763 (2000).

markets it oversees remain open, fair and transparent.

I am confident that the new regulatory regime will foster the competitiveness of U.S. derivatives marketplaces, and that is good. I am less confident that the regulations implementing this new regime will foster open and competitive bids and offers for transactions in markets, which for customers and commercial participants is bad. Thus, I have repeatedly requested comment on those issues that would enable this agency to be confident that its regulatory framework retains tools necessary to detect and deter manipulation, detect and deter abusive trade practices, and vigorously enforce our fraud authority.[2] Where this Commission has a regulatory interest, it should be demanding the maximum transparency allowed by law.[3] Today's rules, I fear, leave enormous gaps in our regulatory oversight regime.

The longstanding tradition of public, open markets in the United States seems to have given way to the notion that private, closed markets are superior in every respect. Perhaps private, closed markets are more expedient for their participants. But it will be incumbent on industry participants to see to it that the public interest in open, fair and transparent markets is not compromised.

In the end, public confidence in our markets will depend upon how the industry adapts to and carries out its new responsibilities under the law and these regulations. I sincerely hope that the derivatives markets will find self-interest to be a powerful motivator and that market participants will reward those markets adhering to the highest standards of market integrity.

/S/

Commissioner Thomas J. Erickson

Date: 7/26/01

[FR Doc. 01–19496 Filed 8–9–01; 8:45 am]

BILLING CODE 6351–01–P

[2] Throughout the process of developing and implementing a new regulatory framework for the oversight of derivatives markets, the Commission, in my estimation, has not adequately taken into account the public interest by failing to request comment on issues salient to our ability to carry out our primary regulatory obligations. I have taken exception with the Commission's process in this regard. The resulting public record, in this case, lacks serious consideration of the public interest and has resulted in rules that require little and expect even less.

[3] Certainly, for example, the Commission has the discretion to require large trader reporting in DTF markets. In fact, the U.S. Department of the Treasury requested as much in comments submitted to the Commission on April 9, 2001. Treasury recommended ''that there be large trader reporting requirements for any exempt security futures that trade on a DTF as well as on a regulated contract market.'' Even with such a direct request from a fellow regulator, the Commission has failed to exercise its discretion to insist upon greater transparency.

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 40

Fees for Product Review and Approval

AGENCY: Commodity Futures Trading Commission.

ACTION: Establishment of a new schedule of fees.

SUMMARY: The Commission charges fees to designated contract markets and registered derivatives transaction execution facilities to recover the costs of its review of requests for product review and approval. The calculation of the fee amounts to be charged for the upcoming year is based on an average of actual program costs incurred in the most recent three full fiscal years, as explained below. The new fee schedule is set forth below.

EFFECTIVE DATE: August 10, 2001.

FOR FURTHER INFORMATION CONTACT: Richard A. Shilts, Acting Director, Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, (202) 418–5260.

SUPPLEMENTARY INFORMATION:

I. Summary of Fees

Fees charged for processing requests for product review and approval:

Single Applications:

- A single futures contract or an option on a physical—$6,000
- A single option on a previously-approved futures contract—$1,100
- A combined submission of a futures contract and an option on the same futures contract—$6,500.

Multiple Applications:

For multiple contract filings containing related contracts, the product review and approval fees are:

- A submission of multiple related futures contracts—$6,000 for the first contract, plus $600 for each additional contract;
- A submission of multiple related options on futures contracts—$1,100 for the first contract, plus $110 for each additional contract;
- A combined submission of multiple futures contracts and options on those futures contracts—$6,500 for the first combined futures and option contract, plus $650 for each additional futures and option contract.

II. Background Information

1. General

The Commission recalculates the fees charged each year with the intention of recovering the costs of operating certain programs.[1] All costs are accounted for by the Commission's Management Accounting Structure Codes (MASC) system operated according to a government-wide standard established by the Office of Management and Budget. The fees are set each year based on direct program costs, plus an overhead factor.

2. Overhead Rate

The fees charged by the Commission are designed to recover program costs, including direct labor costs and overhead. The overhead rate is calculated by dividing total Commission-wide direct program labor costs into the total amount of the Commission-wide overhead pool. For this purpose, direct program labor costs are the salary costs of personnel working in all Commission programs. Overhead costs consist generally of the following Commission-wide costs: indirect personnel costs (leave and benefits), rent, communications, contract services, utilities, equipment, and supplies. This formula has resulted in the following overhead rates for the most recent three years (rounded to the nearest whole percent): 104 percent for fiscal year 1998, 105 percent for fiscal year 1999, and 105 percent for fiscal year 2000. These overhead rates are applied to the direct labor costs to calculate the costs of reviewing contract approval requests.

3. Processing Requests for Contract Approval

Calculations of the fees for processing requests for product review and approval have become more refined over the years as the types of contracts being reviewed have changed.

On August 23, 1983, the Commission established a fee for Contract Market Designation (48 FR 38214). Prior to its recent amendment, the Commodity Exchange Act (Act) provided for ''designation'' of each new contract as a ''contract market.'' The Commodity Futures Modernization Act (CFMA) amended the Act to limit the concept of ''contract market designation'' to approval of certain markets or trading facilities on which futures and options are traded, as opposed to approval of the product. The Commission has adopted rules, published elsewhere in this edition of the **Federal Register**, that implement the CFMA and the Commission's new regulatory framework. The implementing rules charge a fee for product review where

[1] *See* Section 237 of the Futures Trading Act of 1982, 7 U.S.C. 16a and 31 U.S.C. 9701. For a broader discussion of the history of Commission fees, *see* 52 FR 46070 (Dec. 4, 1987).

approval has been requested by a designated contract market or registered derivatives transaction execution facility (DTF). No fee is charged for the initial designation of a contract market or registration of a DTF.

The fee, as originally adopted in 1983, was based on a three-year moving average of the actual costs expended and the number of contracts reviewed by the Commission during that period. The formula for determining the fee was revised in 1985. At that time, most designation applications were for futures contracts and no separate fee was set for option contracts.

In 1992, the Commission reviewed its data on the actual costs for reviewing applications for both futures and option contracts and determined that the percentage of applications pertaining to options had increased and that the cost of reviewing a futures contract designation application was much higher than the cost of reviewing an application for an option contract. The Commission also determined that when applications for a futures contract and an option on that futures contract are submitted simultaneously, the cost is much lower than when the contracts are separately reviewed. To recognize this cost difference, three separate fees were established: one for futures; one for options; and one for combined futures and option contract applications (57 FR 1372, Jan. 14, 1992).

The Commission refined its fee structure further in fiscal year 1999 to recognize the unique processing cost characteristics of a class of contracts—cash-settled based on an index of non-tangible commodities. The Commission determined to charge a reduced fee for related simultaneously submitted contracts for which the terms and conditions of all contracts in the filing are identical, except in regard to a specified temporal or spatial pricing characteristic or the multiplier used to determine the size of each contract. Contracts on major currencies (defined as the Australian dollar, British pound, Euro (and its component currencies), Japanese yen, Canadian dollar, Swiss franc, New Zealand dollar, Swedish krona, and the Norwegian krone) (including contracts based on currency cross rates) are also eligible for the reduced multiple contract fees.

Contracts having differentiated spatial features include contracts which are identical in all respects, including the cash settlement mechanism, but which may be based on different geographical areas. These may include contracts on weather-related data or vacancy rates for rental properties, where each individual contract is based on the value—temperature, local vacancy rate, etc.—for a specific city. To be eligible for the multiple contract filing fee, each contract must be cash-settled based on the same underlying data source and derived under identical calculation procedures, such that the integrity of the cash settlement mechanism is not dependent on the individual spatial specifications.[2]

Contracts having differentiated temporal features include contracts that are the same in all respects except for the time to maturity of the individual underlying instruments. This may include cash-settled interest rate futures contracts within a specific segment of the yield curve, provided that for each contract the cash settlement mechanism and derivation procedure is identical, and the integrity of the cash settlement mechanism is not dependent on the individual temporal specifications. Examples include short-term interest rate contracts having monthly maturities ranging up to one year.[3]

The Commission determined that a 10 percent marginal fee for additional contracts in a filing is appropriate for simultaneously submitted contracts eligible for the multiple contract filing fee. Because the eligible related contracts are based on indices of non-tangible commodities not traded in the cash market, the Commission's review need not require a separate analysis of the different contracts in a filing related to the liquidity of the underlying cash markets or the reliability or transparency of prices for the individual commodities. Because each contract must use an identical cash settlement procedure and all other material terms and conditions must be identical (except for the differentiated spatial or temporal term or the contract multiplier), the analysis of the cash settlement procedure for one contract would apply in large part to each of the additional contracts. Finally, because all of the contracts in a related group are differentiated from each other only with respect to a spatial or temporal feature that has no bearing on the characteristics of the cash settlement mechanism, each contract would not require a separate analysis to ascertain its compliance with the requirements for designation. Hence, the Commission's analysis of the cash settlement procedure in general and its review of the other material terms and conditions would be applicable equally to all related contracts in the filing. Only a limited supplemental analysis is required for each additional contract in such a filing, resulting in a substantially reduced marginal cost for reviewing and processing the additional contracts.

Multiple contract filings of related futures and option contracts on major currencies are eligible for the multiple contract fees for the same reasons that reduced fees are appropriate for multiple related cash-settled contract filings. While currency contracts may not be cash settled, *per se,* issues related to physical delivery contracts do not arise for currencies, since like contracts providing for cash settlement, future delivery and payment involve simply the exchange of cash (one currency for another). Moreover, the Commission has found that major currencies (as defined here) have nearly inexhaustible deliverable supplies, exhibit extremely deep and liquid markets, are not subject to convertibility or delivery restrictions and are easily arbitraged between cash and futures markets and it has exempted contracts based on major currencies from speculative limits. Therefore, no separate analysis is required of the manipulation potential of each contract based on a major currency in a multiple contract filing. Moreover, delivery and payment procedures and all other terms and conditions are identical for currency contracts; the difference is limited to the actual currency transferred in the delivery and payment process. Since only an incremental analysis is needed for each additional contract in a multiple contract filing, lower fees are more in line with actual processing costs.

The Commission's experience in reviewing new contracts indicates that for simultaneous submission of multiple related major currency or cash-settled contracts, a fee for each additional contract equal to 10 percent of the single contract fee reflects the Commission's expected review costs for these reviews. The Commission's fee for simultaneous submission of such related contracts is equal to the prevailing single contract fee applicable to the first contract plus 10 percent for each additional contract in the filing. This marginal cost-based fee structure is an extension of the policy adopted by the Commission in 1992 when it established reduced fees

[2] Submissions containing a number of similar cash-settled contracts based on the government debt of different foreign countries would not be eligible for the reduced fee, since the manipulation potential of each contract would be related to the liquidity of the underlying instruments, and the individual trading practices and governmental oversight in each specific country require separate analysis.

[3] Cash-settled contracts covering various segments of the yield curve would not be eligible for the reduced fee, since the underlying instruments may be priced differently and have different trading characteristics, and the manipulation potential of each contract would be related to the liquidity of the underlying instruments and require separate analysis.

for option filings and for combined futures and option filings.

For multiple, simultaneously submitted, major currency or cash-settled contract filings to be eligible for the reduced fees, the contracts in the filing must meet the following criteria:

a. each contract must be based on a major currency or be cash-settled based on an index representing measurements of physical properties or financial characteristics which are not traded *per se* in the cash market, except in regard to the specified currency or the temporal or spatial pricing characteristics of the cash settlement price or the multiplier used to determine the size of each contract;

b. the currency delivery procedures or the cash settlement procedure must be the same for each contract in the filing;

c. all other terms and conditions of the contracts must be the same in all respects; and

d. the filing must contain a claim for the reduced fee and a representation that the terms a through c above have been met.

The Commission also notes that the fees for futures contract filings apply to filings for options on physical commodities, and that the reduced option fee applies only to applications for options on existing futures contracts. The requirements for approval of an option on a physical commodity are substantially similar to those of futures and so the same fee applies to both types of filings.[4]

Commission staff compiled the actual costs of processing a request for product review and contract approval for a futures contract for fiscal years 1998, 1999, and 2000, and found that the average cost over the three-year period was $6,000, including overhead. Review of actual costs of processing contract approval reviews for an option contract for fiscal years 1998, 1999, and 2000 reveal that the average cost over the period was $1,100 per contract, including overhead.

In accordance with its regulations recodified elsewhere in this edition of the **Federal Register** as 17 CFR Part 40 Appendix B, the Commission has determined that the fee for approval of a futures contract will be set at $6,000 and the fee for approval of an option contract will be set at $1,100. The fee for simultaneously submitted futures contracts and option contracts on those futures contracts and the fees for filings containing multiple cash-settled indices on non-tangible commodities have been set similarly and as indicated in the schedule set forth in the Summary of Fees above.

[4] The Commission's Guideline No. 1 details the information that must be included in a request for approval of a contract; all requirements for futures contracts (physical delivery or cash settlement) also apply to options on physicals applications (several additional requirements apply only to options). 63 FR 38537 (July 17, 1998).

III. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601, et seq., requires agencies to consider the impact of rules on small business. The fees implemented in this release affect contract markets and registered DTFs. The Commission has previously determined that contract markets and registered DTFs are not ''small entities'' for purposes of the Regulatory Flexibility Act. Accordingly, the Acting Chairman, on behalf of the Commission, certifies pursuant to 5 U.S.C. 605(b), that the fees implemented here will not have a significant economic impact on a substantial number of small entities.

Issued in Washington, DC on July 30, 2001 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 01–19497 Filed 8–9–01; 8:45 am]

BILLING CODE 6351–01–P

Federal Register

Friday,
August 10, 2001

Part III

Department of Housing and Urban Development

Federal Property Suitable as Facilities To Assist the Homeless; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4644–N–32]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Clifford Taffet, room 7266, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Clifford Taffet at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.,* acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: COE: Ms. Shirley Middleswarth, Army Corps of Engineers, Management & Disposal Division, 441 G Street, Washington, DC 20314–1000; (202) 761–7425; DOT: Mr. Rugene Spruill, Space Management, SVC–140, Transportation Administrative Service Center, Department of Transportation, 400 7th Street, SW., Room 2310, Washington, DC 20590; (202) 366–4246; ENERGY: Mr. Tom Knox, Department of Energy, Office of Engineering & Construction Management, CR–80, Washington, DC 20585; (202) 586–8715; GSA: Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW., Washington, DC 20405; (202) 501–0052; INTERIOR: Ms. Linda Tribby, Acquisition & Property Management, Department of the Interior, 1849 C Street, NW, Washington, DC 20240; (202) 219–0728; NAVY: Mr. Charles C. Cocks, Director, Department of the Navy, Real Estate Policy Division, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE., Suite 1000, Washington, DC 20374–5065; (202) 685–9200; (These are not toll-free numbers).

Dated: August 3, 2001.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 8/10/01

Suitable/Available Properties

Buildings (by State)

Alaska

Bethel Army Advisor Housing
450 Katie Hately Lane
Blueberry Field Subdivision
Bethel Co: AK 99559–
Landholding Agency: GSA
Property Number: 54200130004
Status: Excess
Comment: 1448 sq. ft. family residence w/ shed and greenhouse, condition—unknown
GSA Number: 9–D–AK–769

Bethel Army Advisor Housing
150 Cranberry Lane
Blueberry Field Subdivision
Bethel Co: AK 99559–
Landholding Agency: GSA
Property Number: 54200130005
Status: Excess
Comment: 1508 sq. ft. residence
GSA Number: 9–D–AK–770

Nome Army Advisor Housing
972 East 3rd Ave.
Nome Co: AK 99762–
Landholding Agency: GSA
Property Number: 54200130006
Status: Excess
Comment: 3200 sq. ft. residential duplex
GSA Number: 9–D–AK–766

Bldg. 747
USCG Integrated Support Command
Nemetz Housing
Kodiak Co: AK 99615–
Landholding Agency: DOT
Property Number: 87200110001
Status: Excess
Comment: 4-plex, needs repair, presence of asbestos/lead paint, most recent use—residential, off-site use only

Bldg. 750

USCG Integrated Support Command
Nemetz Housing
Kodiak Co: AK 99615–
Landholding Agency: DOT
Property Number: 87200110002
Status: Excess
Comment: 4-plex, needs repair, presence of asbestos/lead paint, most recent use—residential, off-site use only

Bldg. 751
USCG Integrated Support Command
Nemetz Housing
Kodiak Co: AK 99615–
Landholding Agency: DOT
Property Number: 87200110003
Status: Excess
Comment: 4-plex, needs repair, presence of asbestos/lead paint, most recent use—residential, off-site use only

Bldg. 752
USCG Integrated Support Command
Nemetz Housing
Kodiak Co: AK 99615–
Landholding Agency: DOT
Property Number: 87200110004
Status: Excess
Comment: 4-plex, needs repair, presence of asbestos/lead paint, most recent use—residential, off-site use only

Bldg. 753
USCG Integrated Support Command
Nemetz Housing
Kodiak Co: AK 99615–
Landholding Agency: DOT
Property Number: 87200110005
Status: Excess
Comment: 4-plex, needs repair, presence of asbestos/lead paint, most recent use—residential, off-site use only

Bldg. 754
USCG Integrated Support Command
Nemetz Housing
Kodiak Co: AK 99615–
Landholding Agency: DOT
Property Number: 87200110006
Status: Excess
Comment: 4-plex, needs repair, presence of asbestos/lead paint, most recent use—residential, off-site use only

Bldg. 755
USCG Integrated Support Command
Nemetz Housing
Kodiak Co: AK 99615–
Landholding Agency: DOT
Property Number: 87200110007
Status: Excess
Comment: 4-plex, needs repair, presence of asbestos/lead paint, most recent use—residential, off-site use only

Bldg. 759
USCG Integrated Support Command
Nemetz Housing
Kodiak Co: AK 99615–
Landholding Agency: DOT
Property Number: 87200110008
Status: Excess
Comment: 4-plex, needs repair, presence of asbestos/lead paint, most recent use—residential, off-site use only

Bldg. 736
CG Integrated Support Command
Kodiak Co: AK 99615–
Landholding Agency: DOT
Property Number: 87200110026
Status: Excess
Comment: 6912 sq. ft., presence of asbestos/lead paint, most recent use—residential, off-site use only

Bldg. 738
CG Integrated Support Command
Kodiak Co: AK 99615–
Landholding Agency: DOT
Property Number: 87200110027
Status: Excess
Comment: 5336 sq. ft., presence of asbestos/lead paint, most recent use—residential, off-site use only

Bldg. 740
CG Integrated Support Command
Kodiak Co: AK 99615–
Landholding Agency: DOT
Property Number: 87200110028
Status: Excess
Comment: 6912 sq. ft., presence of asbestos/lead paint, most recent use—residential, off-site use only

Bldg. 745
CG Integrated Support Command
Kodiak Co: AK 99615–
Landholding Agency: DOT
Property Number: 87200110029
Status: Excess
Comment: 5336 sq. ft., presence of asbestos/lead paint, most recent use—residential, off-site use only

Bldg. 746
CG Integrated Support Command
Kodiak Co: AK 99615–
Landholding Agency: DOT
Property Number: 87200110030
Status: Excess
Comment: 5336 sq. ft., presence of asbestos/lead paint, most recent use—residential, off-site use only

Bldg. 748
CG Integrated Support Command
Kodiak Co: AK 99615–
Landholding Agency: DOT
Property Number: 87200110031
Status: Excess
Comment: 5336 sq. ft., presence of asbestos/lead paint, most recent use—residential, off-site use only

Bldg. 761
CG Integrated Support Command
Kodiak Co: AK 99615–
Landholding Agency: DOT
Property Number: 87200110032
Status: Excess
Comment: 6912 sq. ft., presence of asbestos/lead paint, most recent use—residential, off-site use only

Bldg. 762
CG Integrated Support Command
Kodiak Co: AK 99615–
Landholding Agency: DOT
Property Number: 87200110033
Status: Excess
Comment: 6912 sq. ft., presence of asbestos/lead paint, most recent use—residential, off-site use only

Bldg. 763
CG Integrated Support Command
Kodiak Co: AK 99615–
Landholding Agency: DOT
Property Number: 87200110034
Status: Excess
Comment: 6912 sq. ft., presence of asbestos/lead paint, most recent use—residential, off-site use only

Bldg. 770
CG Integrated Support Command
Kodiak Co: AK 99615–
Landholding Agency: DOT
Property Number: 87200110035
Status: Excess
Comment: 6912 sq. ft., presence of asbestos/lead paint, most recent use—residential, off-site use only

Arizona

Federal Building
26 North MacDonald St.
Messa Co: AZ 85201–
Landholding Agency: GSA
Property Number: 4520013007
Status: Excess
Comment: Total of 21027 gross sq. ft., 19706 rentable sq. ft. and 10352 occupiable sq. ft., w/paved parking, possible asbestos, potential for listing on National Register
GSA Number: 9–G–AZ–823

SSA Federal Bldg.
216 South Cortez St.
Prescott Co: AZ 86303–
Landholding Agency: GSA
Property Number: 4520013008
Status: Excess
Comment: 5306 gross sq. ft., 5088 rentable sq. ft., 4128 useable sq. ft., possible asbestos
GSA Number: 9–G–AZ–822

California

Bldg. 4151
8006 Bill's Hill
Yosemite Co: Mariposa CA 95389–
Landholding Agency: Interior
Property Number: 61200130001
Status: Unutilized
Comment: 560 sq. ft., seasonal housing, presence of lead paint, off-site use only

Bldg. 2317
2123 Enderts Beach Rd.
Crescent City Co: Del Norte CA 95531–
Landholding Agency: Interior
Property Number: 61200130002
Status: Excess
Comment: 1100 sq. ft., poor condition, most recent use—residence, off-site use only

Bldg. 2318
2123 Enderts Beach Rd.
Crescent City Co: Del Norte CA 95531–
Landholding Agency: Interior
Property Number: 61200130003
Status: Excess
Comment: 150 sq. ft., off-site use only

Florida

Lexington Terrace Housing
Portion of NAS Pensacola
Old Corry Field Rd.
Pensacola Co: Excambia FL 32508–
Landholding Agency: GSA
Property Number: 4520013009
Status: Surplus
Comment: 198 individual housing units, approximately 400 to 800 sq. ft. per unit, presence of lead base paint, potential electric power
GSA Number: 4–N–FL–0735

Indiana

Radio Tower
Myers Locks & Dam Project
Mt. Vernon Co: IN 47620–
Landholding Agency: COE
Property Number: 31200040002

Status: Excess
Comment: communication, off-site use only

Radio Tower
C.M. Harden Project
Rockville Co: IN 47872–
Landholding Agency: COE
Property Number: 31200040005
Status: Excess
Comment: communication, off-site use only

Radio Tower
Mississinewa Lake Project
Peru Co: IN 46970–
Landholding Agency: COE
Property Number: 31200040006
Status: Excess
Comment: communication, off-site use only

Radio Tower
Patoka Lake Project
Birdseye Co: IN 46970–
Landholding Agency: COE
Property Number: 31200040007
Status: Excess
Comment: communication, off-site use only

Kentucky

Green River Lock & Dam #3
Rochester Co: Butler KY 42273–
Location: SR 70 west from Morgantown, KY., approximately 7 miles to site
Landholding Agency: COE
Property Number: 31199010022
Status: Unutilized
Comment: 980 sq. ft.; 2 story wood frame; two story residence; potential utilities; needs major rehab

Kentucky River Lock and Dam 3
Pleasureville Co: Henry KY 40057–
Location: SR 421 North from Frankfort, KY. to highway 561, right on 561 approximately 3 miles to site
Landholding Agency: COE
Property Number: 31199010060
Status: Unutilized
Comment: 897 sq. ft.; 2 story wood frame; structural deficiencies

Bldg. 1
Kentucky River Lock and Dam
Carrolton Co: Carroll KY 41008–
Location: Take I–71 to Carrolton, KY exit, go east on SR #227 to Highway 320, then left for about 1.5 miles to site
Landholding Agency: COE
Property Number: 31199011628
Status: Unutilized
Comment: 1530 sq. ft.; 2 story wood frame house; subject to periodic flooding; needs rehab

Bldg. 2
Kentucky River Lock and Dam
Carrolton Co: Carroll KY 41008–
Location: Take I–71 to Carrolton, KY exit, go east on SR #227 to highway 320, then left for about 1.5 miles to site
Landholding Agency: COE
Property Number: 31199011629
Status: Unutilized
Comment: 1530 sq. ft.; 2 story wood frame house; subject to periodic flooding; needs rehab

Utility Bldg, Nolin River Lake
Moutardier Recreation Site
Co: Edmonson KY
Landholding Agency: COE
Property Number: 31199320002
Status: Unutilized
Comment: 541 sq. ft., concrete block, off-site use only

Maryland

Bldg. 9
Coast Guard Yard
2401 Hawkins Point Rd.
Baltimore Co: MD 21226–
Landholding Agency: DOT
Property Number: 87200110013
Status: Excess
Comment: 5250 sq. ft. bowling center, off-site use only

Bldg. 21
Coast Guard Yard
2401 Hawkins Point Rd.
Baltimore Co: MD 21226–
Landholding Agency: DOT
Property Number: 87200110014
Status: Excess
Comment: 8100 sq. ft. storage shed, off-site use only

Bldg. 23
Coast Guard Yard
2401 Hawkins Point Rd.
Baltimore Co: MD 21226–
Landholding Agency: DOT
Property Number: 87200110015
Status: Excess
Comment: 8100 sq. ft. storage shed, off-site use only

Bldg. 52
Coast Guard Yard
2401 Hawkins Point Rd.
Baltimore Co: MD 21226–
Landholding Agency: DOT
Property Number: 87200110016
Status: Excess
Comment: 1560 sq. ft. storage shed, off-site use only

Bldg. 57
Coast Guard Yard
2401 Hawkins Point Rd.
Baltimore Co: MD 21226–
Landholding Agency: DOT
Property Number: 87200110017
Status: Excess
Comment: 800 sq. ft.storage shed, off-site use only

Massachusetts

Storage Bldg.
Knightville Dam Road
Huntington Co: Hampshire MA 01050–
Landholding Agency: COE
Property Number: 31200030005
Status: Unutilized
Comment: 480 sq. ft., needs rehab, off-site use only

Mississippi

Quarters #162
Natchez Trace Pkwy
162 Trace Circle
Ridgeland Co: Madison MS 39157–
Landholding Agency: Interior
Property Number: 61200110001
Status: Excess
Comment: 1121 sq. ft., presence of asbestos, most recent use—residential, off-site use only

Quarters #167
Natchez Trace Pkwy
Rt. 1, Box 46A
Port Gibson Co: Claiborne MS 39150–
Landholding Agency: Interior
Property Number: 61200110002
Status: Excess
Comment: 1415 sq. ft., presence of asbestos, most recent use—residential, off-site use only

Quarters #257
Natchez Trace Pkwy
Star Route Box 14
Carlisle Co: Claiborne MS 39049–
Landholding Agency: Interior
Property Number: 61200110003
Status: Excess
Comment: 1415 sq. ft., presence of asbestos, most recent use—residential, off-site use only

Quarters #182
182 Natchez Trace Pkwy
Kosciusko Co: Atalla MS 39090–
Landholding Agency: Interior
Property Number: 61200110004
Status: Excess
Comment: 1121 sq. ft., presence of asbestos, most recent use—residential, off-site use only

Quarters #197
Natchez Trace Pkwy
Rt. 1
Mantee Co: Chickasaw MS 39751–
Landholding Agency: Interior
Property Number: 61200110005
Status: Excess
Comment: 1121 sq. ft., presence of asbestos, most recent use—residential, off-site use only

Montana

Bldg. 1
Butte Natl Guard
Butte Co: Silverbow MT 59701–
Landholding Agency: COE
Property Number: 31200040010
Status: Unutilized
Comment: 22799 sq. ft., presence of asbestos, most recent use—cold storage, off-site use only

Bldg. 2
Butte Natl Guard
Butte Co: Silverbow MT 59701–
Landholding Agency: COE
Property Number: 31200040011
Status: Unutilized
Comment: 3292 sq. ft., most recent use—cold storage, off-site use only

Bldg. 3
Butte Natl Guard
Butte Co: Silverbow MT 59701–
Landholding Agency: COE
Property Number: 31200040012
Status: Unutilized
Comment: 964 sq. ft., most recent use—cold storage, off-site use only

Bldg. 4
Butte Natl Guard
Butte Co: Silverbow MT 59701–
Landholding Agency: COE
Property Number: 31200040013
Status: Unutilized
Comment: 72 sq. ft., most recent use—cold storage, off-site use only

Bldg. 5
Butte Natl Guard
Butte Co: Silverbow MT 59701–
Landholding Agency: COE
Property Number: 31200040014
Status: Unutilized

Comment: 1286 sq. ft., most recent use—cold storage, off-site use only

New Mexico

Tract #101–23
Blair Property
Aztec Ruins Natl Monument
Aztec Co: San Juan NM 87410–
Location: Mobile Home, 604 Ruins Rd.
Landholding Agency: Interior
Property Number: 61200120024
Status: Excess
Comment: 14 x 70 sq. ft., most recent use—residential, off-site use only

Tract #101–23
Blair Property
Aztec Ruins Natl Monument
Aztec Co: San Juan NM 87410–
Location: Manu. house, 604 Ruins Rd.
Landholding Agency: Interior
Property Number: 61200120025
Status: Excess
Comment: 1344 sq. ft., most recent use—residential, off-site use only

Tract 101–11
Randack Property
Aztec Ruins Natl Monument
Aztec Co: San Juan NM 87410–9715
Location: Mobile home, #84 County Road
Landholding Agency: Interior
Property Number: 61200120026
Status: Excess
Comment: 1064 sq. ft., most recent use—residence, off-site use only

North Dakota

Office Bldg.
Lake Oahe Project
3rd & Main
Ft. Yates Co: Sioux ND 58538–
Landholding Agency: COE
Property Number: 31200020001
Status: Unutilized
Comment: 1200 sq. ft., 2-story wood, off-site use only

Ohio

Barker Historic House
Willow Island Locks and Dam
Newport Co: Washington OH 45768–9801
Location: Located at lock site, downstream of lock and dam structure
Landholding Agency: COE
Property Number: 31199120018
Status: Unutilized
Comment: 1600 sq. ft. bldg. with ½ acre of land, 2 story brick frame, needs rehab, on Natl Register of Historic Places, no utilities, off-site use only

Dwelling No. 2
Delaware Lake, Highway 23 North
Delaware OH 43015–
Landholding Agency: COE
Property Number: 31199810005
Status: Excess
Comment: 2-story brick w/basement, most recent use—residential, presence of asbestos/lead paint, off-site use only

Oklahoma

Water Treatment Plant
Belle Starr, Eufaula Lake
Eufaula Co: McIntosh OK 74432–
Landholding Agency: COE
Property Number: 31199630001
Status: Excess
Comment: 16′ x 16′, metal, off-site use only

Water Treatment Plant
Gentry Creek, Eufaula Lake
Eufaula Co: McIntosh OK 74432–
Landholding Agency: COE
Property Number: 31199630002
Status: Excess
Comment: 12′ x 16′, metal, off-site use only

Pennsylvania

Mahoning Creek Reservoir
New Bethlehem Co: Armstrong PA 16242–
Landholding Agency: COE
Property Number: 31199210008
Status: Unutilized
Comment: 1015 sq. ft., 2 story brick residence, off-site use only

Dwelling
Lock & Dam 6, Allegheny River, 1260 River Rd.
Freeport Co: Armstrong PA 16229–2023
Landholding Agency: COE
Property Number: 31199620008
Status: Unutilized
Comment: 2652 sq. ft., 3-story brick house, in close proximity to Lock and Dam, available for interim use for nonresidential purposes

Govt. Dwelling
Youghiogheny River Lake
Confluence Co: Fayette PA 15424–9103
Landholding Agency: COE
Property Number: 31199640002
Status: Unutilized
Comment: 1421 sq. ft., 2-story brick w/basement, most recent use—residential

Dwelling
Lock & Dam 4, Allegheny River
Natrona Co: Allegheny PA 15065–2609
Landholding Agency: COE
Property Number: 31199710009
Status: Unutilized
Comment: 1664 sq. ft., 2-story brick residence, needs repair, off-site use only

Dwelling #1
Crooked Creek Lake
Ford City Co: Armstrong PA 16226–8815
Landholding Agency: COE
Property Number: 31199740002
Status: Excess
Comment: 2030 sq. ft., most recent use—residential, good condition, off-site use only

Dwelling #2
Crooked Creek Lake
Ford City Co: Armstrong PA 16226–8815
Landholding Agency: COE
Property Number: 31199740003
Status: Excess
Comment: 3045 sq. ft., most recent use—residential, good condition, off-site use only

Govt. Dwelling
East Branch Lake
Wilcox Co: Elk PA 15870–9709
Landholding Agency: COE
Property Number: 31199740005
Status: Underutilized
Comment: approx. 5299 sq. ft., 1-story, most recent use—residence, off-site use only

Dwelling #1
Loyalhanna Lake
Saltsburg Co: Westmoreland PA 15681–9302
Landholding Agency: COE
Property Number: 31199740006
Status: Excess
Comment: 1996 sq. ft., most recent use—residential, good condition, off-site use only

Dwelling #2
Loyalhanna Lake
Saltsburg Co: Westmoreland PA 15681–9302
Landholding Agency: COE
Property Number: 31199740007
Status: Excess
Comment: 1996 sq. ft., most recent use—residential, good condition, off-site use only

Dwelling #1
Woodcock Creek Lake
Saegertown Co: Crawford PA 16433–0629
Landholding Agency: COE
Property Number: 31199740008
Status: Excess
Comment: 2106 sq. ft., most recent use—residential, good condition, off-site use only

Dwelling #2
Lock & Dam 6, 1260 River Road
Freeport Co: Armstrong PA 16229–2023
Landholding Agency: COE
Property Number: 31199740009
Status: Excess
Comment: 2652 sq. ft., most recent use—residential, good condition, off-site use only

Dwelling #2
Youghiogheny River Lake
Confluence Co: Fayette PA 15424–9103
Landholding Agency: COE
Property Number: 31199830003
Status: Excess
Comment: 1421 sq. ft., 2-story + basement, most recent use—residential

Residence/Office
Cowanesque Lake Project
Lawrenceville Co: Tioga PA 16929–
Landholding Agency: COE
Property Number: 31199940002
Status: Unutilized
Comment: 1653 sq. ft. residence, and 2,640 sq. ft. storage bldg., need major repairs, no operating sanitary facilities

South Dakota

Residence, Tract 102
Oahe Dam Project
915 South Garfield Ave.
Pierre Co: Hughes SD 57501–
Landholding Agency: COE
Property Number: 31200120004
Status: Excess
Comment: 1008 sq. ft., wood frame, attached two-car garage, off-site use only

Residence, Tract 105
Oahe Dam Project
916 South Arthur
Pierre Co: Hughes SD 57501–
Landholding Agency: COE
Property Number: 31200120005
Status: Excess
Comment: 1008 sq. ft., wood frame, no garage, off-site use only

Residence, Tract 113
Oahe Dam Project
1005 South Garfield
Pierre Co: Hughes SD 57501–
Landholding Agency: COE
Property Number: 31200120006
Status: Excess
Comment: 1232 sq. ft., wood frame, attached one-car garage, off-site use only

Residence, Tract 119
Oahe Dam Project
1013 Memory Lane
Pierre Co: Hughes SD 57501–
Landholding Agency: COE
Property Number: 31200120007
Status: Excess
Comment: 936 sq. ft., wood frame, attached two-car garage, off-site use only

Residence, Tract 123
Oahe Dam Project
1001 South Garfield
Pierre Co: Hughes SD 57501–
Landholding Agency: COE
Property Number: 31200120008
Status: Excess
Comment: 816 sq. ft., wood frame, attached two-car garage, off-site use only

Residence, Tract 124
Oahe Dam Project
1009 South Primrose Lane
Pierre Co: Hughes SD 57501–
Landholding Agency: COE
Property Number: 31200120009
Status: Excess
Comment: 996 sq. ft., wood frame, attached one-car port, off-site use only

Residence, Tract 132
Oahe Dam Project
2401 E. Reen
Pierre Co: Hughes SD 57501–
Landholding Agency: COE
Property Number: 31200120010
Status: Excess
Comment: 1536 sq. ft., wood frame, attached two-car garage, off-site use only

Residence, Tract 200
Oahe Dam Project
1013 South Cleveland
Pierre Co: Hughes SD 57501–
Landholding Agency: COE
Property Number: 31200120011
Status: Excess
Comment: 960 sq. ft., wood frame, attached 2½ car garage, off-site use only

Residence/Tract 100
1004 South Garfield
Pierre Co: SD 57501–
Landholding Agency: COE
Property Number: 31200130001
Status: Excess
Comment: 1200 sq. ft., off-site use only

Residence/Tract 128
1003 South Garfield
Pierre Co: SD 57501–
Landholding Agency: COE
Property Number: 31200130002
Status: Excess
Comment: 816 sq. ft., off-site use only

Residence/Tract 111
916 Memory Lane ‘
Pierre Co: SD 57501–
Landholding Agency: COE
Property Number: 31200130003
Status: Excess
Comment: 912 sq. ft., off-site use only

Tennessee

Quarters #169
Natchez Track Pkwy
222 Meriwether Lewis Rd.
Hohenwald Co: Lewis TN 38462–
Landholding Agency: Interior
Property Number: 61200110006
Status: Excess
Comment: 1121 sq. ft., presence of asbestos, most recent use—residential, off-site use only

Texas

Tract No. 104–44
8918 Graf Road
San Antonio Co: Bexar TX 78223–
Landholding Agency: Interior
Property Number: 61200120012
Status: Unutilized
Comment: 1210 sq. ft., most recent use—residential, off-site use only

Tract 110–01
1234 S. Presa
San Antonio Co: Bexar TX 78210–
Landholding Agency: Interior
Property Number: 61200120013
Status: Unutilized
Comment: 1100 sq. ft., most recent use—residential, off-site use only

Utah

Hovenweep Ranger Station
CR 212
Hovenweep Co: San Juan UT 84534–
Landholding Agency: Interior
Property Number: 61200130004
Status: Excess
Comment: 659 sq. ft., poor condition, most recent use—visitor station, off-site use only

Virginia

Metal Bldg.
John H. Kerr Dam & Reservoir
Co: Boydton VA
Landholding Agency: COE
Property Number: 31199620009
Status: Excess
Comment: 800 sq. ft., most recent use—storage, off-site use only

Former Bowen Residence
Cavalry Court
Spotsylvania Co: VA 22553–
Landholding Agency: Interior
Property Number: 61200010007
Status: Excess
Comment: 1512 sq. ft. residence, off-site use only

Former Jones Residence
Plantation Drive
Spotsylvania Co: VA 22553–
Landholding Agency: Interior
Property Number: 61200010008
Status: Excess
Comment: 1040 sq. ft. residence, off-site use only

Former Busic House
Brock Rd.
Spotsylvania Co: VA 22553–
Landholding Agency: Interior
Property Number: 61200010009
Status: Excess
Comment: 4128 sq. ft. residence, off-site use only

Washington

Bldg. 31
440 Yule Road
Yakima Co: WA 98908–
Landholding Agency: Interior
Property Number: 61200120019
Status: Excess
Comment: 1065 sq. ft., needs rehab, presence of lead paint, most recent use—residence, off-site use only

Bldg. 37
474 Camp 4 Road
Yakima Co: WA 98908–
Landholding Agency: Interior
Property Number: 61200120020
Status: Excess
Comment: 932 sq. ft., needs rehab, presence of lead paint, most recent use—residence, off-site use only

Bldg. 38
476 Camp 4 Road
Yakima Co: WA 98908–
Landholding Agency: Interior
Property Number: 61200120021
Status: Excess
Comment: 1152 sq. ft., needs rehab, presence of lead paint, most recent use—residence, off-site use only

West Virginia

Dwelling 1
Summersville Lake
Summersville Co: Nicholas WV 26651–9802
Landholding Agency: COE
Property Number: 31199810003
Status: Excess
Comment: 1200 sq. ft., presence of asbestos/lead paint, most recent use—residential, off-site use only

Dwelling 2
Sutton Lake
Sutton Co: Braxton WV 26651–9802
Landholding Agency: COE
Property Number: 31199810004
Status: Excess
Comment: 1100 sq. ft., most recent use—residential, off-site use only

Wisconsin

Former Lockmaster’s Dwelling
Cedar Locks
4527 East Wisconsin Road
Appleton Co: Outagamie WI 54911–
Landholding Agency: COE
Property Number: 31199011524
Status: Unutilized
Comment: 1224 sq. ft.; 2 story brick/wood frame residence; needs rehab; secured area with alternate access.

Former Lockmaster’s Dwelling
Appleton 4th Lock
905 South Lowe Street
Appleton Co: Outagamie WI 54911–
Landholding Agency: COE
Property Number: 31199011525
Status: Unutilized
Comment: 908 sq. ft.; 2 story wood frame residence; needs rehab.

Former Lockmaster’s Dwelling
Kaukauna 1st Lock
301 Canal Street
Kaukauna Co: Outagamie WI 54131–
Landholding Agency: COE
Property Number: 31199011527
Status: Unutilized
Comment: 1290 sq. ft.; 2 story wood frame residence; needs rehab; secured area with alternate access

Former Lockmaster’s Dwelling
Appleton 1st Lock
905 South Oneida Street
Appleton Co: Outagamie WI 54911–
Landholding Agency: COE
Property Number: 31199011531
Status: Unutilized

Comment: 1300 sq. ft.; potential utilities; 2 story wood frame residence; needs rehab; secured area with alternate access

Former Lockmaster's Dwelling
Rapid Croche Lock
Lock Road
Wrightstown Co: Outagamie WI 54180–
Location: 3 miles southwest of intersection State Highway 96 and Canal Road
Landholding Agency: COE
Property Number: 31199011533
Status: Unutilized
Comment: 1952 sq. ft.; 2 story wood frame residence; potential utilities; needs rehab.

Former Lockmaster's Dwelling
Little KauKauna Lock
Little KauKauna
Lawrence Co: Brown WI 54130–
Location: 2 miles southeasterly from intersection of Lost Dauphin Road (County Trunk Highway ''D'') and River Street
Landholding Agency: COE
Property Number: 31199011535
Status: Unutilized
Comment: 1224 sq. ft.; 2 story brick/wood frame residence; needs rehab.

Former Lockmaster's Dwelling
Little Chute, 2nd Lock 214 Mill Street
Little Chute Co: Outagamie WI 54140–
Landholding Agency: COE
Property Number: 31199011536
Status: Unutilized
Comment: 1224 sq. ft.; 2 story brick/wood frame residence; potential utilities; needs rehab; secured area with alternate access

Land (by State)

Arkansas

Parcel 01
DeGray Lake
Section 12
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 31199010071
Status: Unutilized
Comment: 77.6 acres

Parcel 02
DeGray Lake
Section 13
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 31199010072
Status: Unutilized
Comment: 198.5 acres

Parcel 03
DeGray Lake
Section 18
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 31199010073
Status: Unutilized
Comment: 50.46 acres

Parcel 04
DeGray Lake
Section 24, 25, 30 and 31
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 31199010074
Status: Unutilized
Comment: 236.37 acres

Parcel 05
DeGray Lake
Section 16
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 31199010075
Status: Unutilized
Comment: 187.30 acres

Parcel 06
DeGray Lake
Section 13
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 31199010076
Status: Unutilized
Comment: 13.0 acres

Parcel 07
DeGray Lake
Section 34
Arkadelphia Co: Hot Spring AR 71923–9361
Landholding Agency: COE
Property Number: 31199010077
Status: Unutilized
Comment: 0.27 acres

Parcel 08
DeGray Lake
Section 13
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 31199010078
Status: Unutilized
Comment: 14.6 acres

Parcel 09
DeGray Lake
Section 12
Arkadelphia Co: Hot Spring AR 71923–9361
Landholding Agency: COE
Property Number: 31199010079
Status: Unutilized
Comment: 6.60 acres

Parcel 10
DeGray Lake
Section 12
Arkadelphia Co: Hot Spring AR 71923–9361
Landholding Agency: COE
Property Number: 31199010080
Status: Unutilized
Comment: 4.5 acres

Parcel 11
DeGray Lake
Section 19
Arkadelphia Co: Hot Spring AR 71923–9361
Landholding Agency: COE
Property Number: 31199010081
Status: Unutilized
Comment: 19.50 acres

Lake Greeson
Section 7, 8 and 18
Murfreesboro Co: Pike AR 71958–9720
Landholding Agency: COE
Property Number: 31199010083
Status: Unutilized
Comment: 46 acres

Florida

Outdoor Training Facility
13601 SW 176th St.
Miami Co: FL 33177–
Landholding Agency: GSA
Property Number: 54200130010
Status: Excess
Comment: approx. 144.15 acres, access restrictions, contains one of the most rare ecosystem in Nation—Pine Rocklands, restrictions, air navigation rights GSA Number: 4–D–FL–0546–G

Kansas

Parcel 1
El Dorado Lake
Section 13, 24, and 18
(See County) Co: Butler KS
Landholding Agency: COE
Property Number: 31199010064
Status: Unutilized
Comment: 61 acres; most recent use—recreation.

Kentucky

Tract 2625
Barkley Lake, Kentucky, and Tennessee
Cadiz Co: Trigg KY 42211–
Location: Adjoining the village of Rockcastle.
Landholding Agency: COE
Property Number: 31199010025
Status: Excess
Comment: 2.57 acres; rolling and wooded

Tract 2709–10 and 2710–2
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211–
Location: 2½ miles in a southerly direction from the village of Rockcastle.
Landholding Agency: COE
Property Number: 31199010026
Status: Excess
Comment: 2.00 acres; steep and wooded

Tract 2708–1 and 2709–1
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211–
Location: 2½ miles in a southerly direction from the village of Rockcastle.
Landholding Agency: COE
Property Number: 31199010027
Status: Excess
Comment: 3.59 acres; rolling and wooded; no utilities

Tract 2800
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211–
Location: 4½ miles in a southeasterly direction from the village of Rockcastle.
Landholding Agency: COE
Property Number: 31199010028
Status: Excess
Comment: 5.44 acres; steep and wooded

Tract 2915
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211–
Location: 6½ miles west of Cadiz.
Landholding Agency: COE
Property Number: 31199010029
Status: Excess
Comment: 5.76 acres; steep and wooded; no utilities

Tract 2702
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211–
Location: 1 mile in a southerly direction from the village of Rockcastle.
Landholding Agency: COE
Property Number: 31199010031
Status: Excess
Comment: 4.90 acres; wooded; no utilities

Tract 4318
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: Trigg Co. adjoining the city of Canton, KY. on the waters of Hopson Creek.
Landholding Agency: COE
Property Number: 31199010032
Status: Excess
Comment: 8.24 acres; steep and wooded

Tract 4502
Barkley Lake, Kentucky and Tennessee

Canton Co: Trigg KY 42212–
Location: 3½ miles in a southerly direction from Canton, KY.
Landholding Agency: COE
Property Number: 31199010033
Status: Excess
Comment: 4.26 acres; steep and wooded

Tract 4611
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: 5 miles south of Canton, KY.
Landholding Agency: COE
Property Number: 31199010034
Status: Excess
Comment: 10.51 acres; steep and wooded; no utilities

Tract 4619
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: 4½ miles south from Canton, KY.
Landholding Agency: COE
Property Number: 31199010035
Status: Excess
Comment: 2.02 acres; steep and wooded; no utilities

Tract 4817
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: 6½ miles south of Canton, KY.
Landholding Agency: COE
Property Number: 31199010036
Status: Excess
Comment: 1.75 acres; wooded

Tract 1217
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: On the north side of the Illinois Central Railroad.
Landholding Agency: COE
Property Number: 31199010042
Status: Excess
Comment: 5.80 acres; steep and wooded

Tract 1906
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: Approximately 4 miles east of Eddyville, KY.
Landholding Agency: COE
Property Number: 31199010044
Status: Excess
Comment: 25.86 acres; rolling steep and partially wooded; no utilities

Tract 1907
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42038–
Location: On the waters of Pilfen Creek, 4 miles east of Eddyville, KY.
Landholding Agency: COE
Property Number: 31199010045
Status: Excess
Comment: 8.71 acres; rolling steep and wooded; no utilities

Tract 2001 #1
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: Approximately 4½ miles east of Eddyville, KY.
Landholding Agency: COE
Property Number: 31199010046
Status: Excess
Comment: 47.42 acres; steep and wooded; no utilities

Tract 2001 #2
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: Approximately 4½ miles east of Eddyville, KY.
Landholding Agency: COE
Property Number: 31199010047
Status: Excess
Comment: 8.64 acres; steep and wooded; no utilities

Tract 2005
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: Approximately 5½ miles east of Eddyville, KY.
Landholding Agency: COE
Property Number: 31199010048
Status: Excess
Comment: 4.62 acres; steep and wooded; no utilities

Tract 2307
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: Approximately 7½ miles southeasterly of Eddyville, KY.
Landholding Agency: COE
Property Number: 31199010049
Status: Excess
Comment: 11.43 acres; steep; rolling and wooded; no utilities

Tract 2403
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: 7 miles southeasterly of Eddyville, KY.
Landholding Agency: COE
Property Number: 31199010050
Status: Excess
Comment: 1.56 acres; steep and wooded; no utilities

Tract 2504
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: 9 miles southeasterly of Eddyville, KY.
Landholding Agency: COE
Property Number: 31199010051
Status: Excess
Comment: 24.46 acres; steep and wooded; no utilities

Tract 214
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: South of the Illinois Central Railroad, 1 mile east of the Cumberland River.
Landholding Agency: COE
Property Number: 31199010052
Status: Excess
Comment: 5.5 acres; wooded; no utilities

Tract 215
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: 5 miles southwest of Kuttawa.
Landholding Agency: COE
Property Number: 31199010053
Status: Excess
Comment: 1.40 acres; wooded; no utilities

Tract 241
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: Old Henson Ferry Road, 6 miles west of Kuttawa, KY.
Landholding Agency: COE
Property Number: 31199010054
Status: Excess
Comment: 1.26 acres; steep and wooded; no utilities

Tracts 306, 311, 315 and 325
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: 2.5 miles southwest of Kuttawa, KY. on the waters of Cypress Creek.
Landholding Agency: COE
Property Number: 31199010055
Status: Excess
Comment: 38.77 acres; steep and wooded; no utilities

Tracts 2305, 2306, and 2400–1
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: 6½ miles southeasterly of Eddyville, KY.
Landholding Agency: COE
Property Number: 31199010056
Status: Excess
Comment: 97.66 acres; steep rolling and wooded; no utilities

Tracts 5203 and 5204
Barkley Lake, Kentucky and Tennessee
Linton Co: Trigg KY 42212–
Location: Village of Linton, KY state highway 1254.
Landholding Agency: COE
Property Number: 31199010058
Status: Excess
Comment: 0.93 acres; rolling, partially wooded; no utilities

Tract 5240
Barkley Lake, Kentucky and Tennessee
Linton Co: Trigg KY 42212–
Location: 1 mile northwest of Linton, KY.
Landholding Agency: COE
Property Number: 31199010059
Status: Excess
Comment: 2.26 acres; steep and wooded; no utilities

Tract 4628
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: 4½ miles south from Canton, KY.
Landholding Agency: COE
Property Number: 31199011621
Status: Excess
Comment: 3.71 acres; steep and wooded; subject to utility easements

Tract 4619–B
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: 4½ miles south from Canton, KY.
Landholding Agency: COE
Property Number: 31199011622
Status: Excess
Comment: 1.73 acres; steep and wooded; subject to utility easements

Tract 2403–B
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42038–
Location: 7 miles southeasterly from Eddyville, KY.
Landholding Agency: COE
Property Number: 31199011623
Status: Unutilized
Comment: 0.70 acres, wooded; subject to utility easements

Tract 241–B
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: South of Old Henson Ferry Road, 6 miles west of Kuttawa, KY.

Landholding Agency: COE
Property Number: 31199011624
Status: Excess
Comment: 11.16 acres; steep and wooded; subject to utility easements

Tracts 212 and 237
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: Old Henson Ferry Road, 6 miles west of Kuttawa, KY.
Landholding Agency: COE
Property Number: 31199011625
Status: Excess
Comment: 2.44 acres; steep and wooded; subject to utility easements

Tract 215–B
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: 5 miles southwest of Kuttawa
Landholding Agency: COE
Property Number: 31199011626
Status: Excess
Comment: 1.00 acres; wooded; subject to utility easements

Tract 233
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: 5 miles southwest of Kuttawa
Landholding Agency: COE
Property Number: 31199011627
Status: Excess
Comment: 1.00 acres; wooded; subject to utility easements

Tract B—Markland Locks & Dam
Hwy 42, 3.5 miles downstream of Warsaw
Warsaw Co: Gallatin KY 41095–
Landholding Agency: COE
Property Number: 31199130002
Status: Unutilized
Comment: 10 acres, most recent use—recreational, possible periodic flooding

Tract A—Markland Locks & Dam
Hwy 42, 3.5 miles downstream of Warsaw
Warsaw Co: Gallatin KY 41095–
Landholding Agency: COE
Property Number: 31199130003
Status: Unutilized
Comment: 8 acres, most recent use—recreational, possible periodic flooding

Tract C—Markland Locks & Dam
Hwy 42, 3.5 miles downstream of Warsaw
Warsaw Co: Gallatin KY 41095–
Landholding Agency: COE
Property Number: 31199130005
Status: Unutilized
Comment: 4 acres, most recent use—recreational, possible periodic flooding

Tract N–819
Dale Hollow Lake & Dam Project
Illwill Creek, Hwy 90
Hobart Co: Clinton KY 42601–
Landholding Agency: COE
Property Number: 31199140009
Status: Underutilized
Comment: 91 acres, most recent use—hunting, subject to existing easements

Portion of Lock & Dam No. 1
Kentucky River
Carrolton Co: Carroll KY 41008–0305
Landholding Agency: COE
Property Number: 31199320003
Status: Unutilized
Comment: approx. 3.5 acres (sloping), access monitored

Portion of Lock & Dam No. 2
Kentucky River
Lockport Co: Henry KY 40036–9999
Landholding Agency: COE
Property Number: 31199320004
Status: Underutilized
Comment: approx. 13.14 acres (sloping), access monitored

Carr Creek Lake Project
Tract Nos. 611, 681, 619
Sassafras Co: KY 41759–9703
Landholding Agency: COE
Property Number: 31200040008
Status: Excess
Comment: irregular-shaped, very steep

Louisiana

Wallace Lake Dam and Reservoir
Shreveport Co: Caddo LA 71103–
Landholding Agency: COE
Property Number: 31199011009
Status: Unutilized
Comment: 10.81 acres; wildlife/forestry; no utilities

Bayou Bodcau Dam and Reservoir
Haughton Co: Caddo LA 71037–9707
Location: 35 miles Northeast of Shreveport, La.
Landholding Agency: COE
Property Number: 31199011010
Status: Unutilized
Comment: 203 acres; wildlife/forestry; no utilities

Mississippi

Parcel 7
Grenada Lake
Sections 22, 23, T24N
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 31199011019
Status: Underutilized
Comment: 100 acres; no utilities; intermittently used under lease—expires 1994

Parcel 8
Grenada Lake
Section 20, T24N
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 31199011020
Status: Underutilized
Comment: 30 acres; no utilities; intermittently used under lease—expires 1994

Parcel 9
Grenada Lake
Section 20, T24N, R7E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 31199011021
Status: Underutilized
Comment: 23 acres; no utilities; intermittently used under lease—expires 1994

Parcel 10
Grenada Lake
Sections 16, 17, 18 T24N R8E
Grenada Co: Calhoun MS 38901–0903
Landholding Agency: COE
Property Number: 31199011022
Status: Underutilized
Comment: 490 acres; no utilities; intermittently used under lease—expires 1994

Parcel 2
Grenada Lake
Section 20 and T23N, R5E
Grenada Co: Grenada MS 38901–0903
Landholding Agency: COE
Property Number: 31199011023
Status: Underutilized
Comment: 60 acres; no utilities; most recent use—wildlife and forestry management

Parcel 3
Grenada Lake
Section 4, T23N, R5E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 31199011024
Status: Underutilized
Comment: 120 acres; no utilities; most recent use—wildlife and forestry management; (13.5 acres/agriculture lease)

Parcel 4
Grenada Lake
Section 2 and 3. T23N, R5E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 31199011025
Status: Underutilized
Comment: 60 acres; no utilities; most recent use—wildlife and forestry management

Parcel 5
Grenada Lake
Section 7, T24N, R6E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 31199011026
Status: Underutilized
Comment: 20 acres; no utilities; most recent use—wildlife and forestry management; (14 acres/agriculture lease)

Parcel 6
Grenada Lake
Section 9, T24N, R6E
Grenada Co: Yalobusha MS 38903–0903
Landholding Agency: COE
Property Number: 31199011027
Status: Underutilized
Comment: 80 acres; no utilities; most recent use—wildlife and forestry management

Parcel 11
Grenada Lake
Section 20, T24N, R8E
Grenada Co: Calhoun MS 38901–0903
Landholding Agency: COE
Property Number: 31199011028
Status: Underutilized
Comment: 30 acres; no utilities; most recent use—wildlife and forestry management

Parcel 12
Grenada Lake
Section 25, T24N, R7E
Grenada Co: Yalobusha MS 38390–10903
Landholding Agency: COE
Property Number: 31199011029
Status: Underutilized
Comment: 30 acres; no utilities; most recent use—wildlife and forestry management

Parcel 13
Grenada Lake
Section 34, T24N, R7E
Grenada Co: Yalobusha MS 38903–0903
Landholding Agency: COE
Property Number: 31199011030
Status: Underutilized
Comment: 35 acres; no utilities; most recent use—wildlife and forestry management; (11 acres/agriculture lease)

Parcel 14

Grenada Lake
Section 3, T23N, R6E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 31199011031
Status: Underutilized
Comment: 15 acres; no utilities; most recent use—wildlife and forestry management

Parcel 15
Grenada Lake
Section 4, T24N, R6E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 31199011032
Status: Underutilized
Comment: 40 acres; no utilities; most recent use—wildlife and forestry management

Parcel 16
Grenada Lake
Section 9, T23N, R6E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 31199011033
Status: Underutilized
Comment: 70 acres; no utilities; most recent use—wildlife and forestry management

Parcel 17
Grenada Lake
Section 17, T23N, R7E
Grenada Co: Grenada MS 28901–0903
Landholding Agency: COE
Property Number: 31199011034
Status: Underutilized
Comment: 35 acres; no utilities; most recent use—wildlife and forestry management

Parcel 18
Grenada Lake
Section 22, T23N, R7E
Grenada Co: Grenada MS 28902–0903
Landholding Agency: COE
Property Number: 31199011035
Status: Underutilized
Comment: 10 acres; no utilities; most recent use—wildlife and forestry management

Parcel 19
Grenada Lake
Section 9, T22N, R7E
Grenada Co: Grenada MS 38901–0903
Landholding Agency: COE
Property Number: 31199011036
Status: Underutilized
Comment: 20 acres; no utilities; most recent use—wildlife and forestry management

Missouri
Harry S Truman Dam & Reservoir
Warsaw Co: Benton MO 65355–
Location: Triangular shaped parcel southwest of access road ''B'', part of Bledsoe Ferry Park Tract 150.
Landholding Agency: COE
Property Number: 31199030014
Status: Underutilized
Comment: 1.7 acres; potential utilities.

Oklahoma

Pine Creek Lake
Section 27
(See County) Co: McCurtain OK
Landholding Agency: COE
Property Number: 31199010923
Status: Unutilized
Comment: 3 acres; no utilities; subject to right of way for Oklahoma State Highway 3

Pennsylvania

Mahoning Creek Lake
New Bethlehem Co: Armstrong PA 16242–9603
Location: Route 28 north to Belknap, Road #4
Landholding Agency: COE
Property Number: 31199010018
Status: Excess
Comment: 2.58 acres; steep and densely wooded

Tracts 610, 611, 612
Shenango River Lake
Sharpsville Co: Mercer PA 16150–
Location: I–79 North, I–80 West, Exit Sharon. R18 North 4 miles, left on R518, right on Mercer Avenue
Landholding Agency: COE
Property Number: 31199011001
Status: Excess
Comment: 24.09 acres; subject to flowage easement

Tracts L24, L26
Crooked Creek Lake
Co: Armstrong PA 03051–
Location: Left bank—55 miles downstream of dam
Landholding Agency: COE
Property Number: 31199011011
Status: Unutilized
Comment: 7.59 acres; potential for utilities

Portion of Tract L–21A
Crooked Creek Lake, LR 03051
Ford City Co: Armstrong PA 16226–
Landholding Agency: COE
Property Number: 31199430012
Status: Unutilized
Comment: Approximately 1.72 acres of undeveloped land, subject to gas rights

Portion of Tract 119
State Rt 969
Curwensville Co: Clearfield PA 16833–
Landholding Agency: COE
Property Number: 31200010005
Status: Unutilized
Comment: approx. 17 acres, hilly wooded terrain

Tennessee

Tract 6827
Barkley Lake
Dover Co: Stewart TN 37058–
Location: 2½ miles west of Dover, TN.
Landholding Agency: COE
Property Number: 31199010927
Status: Excess
Comment: .57 acres; subject to existing easements

Tracts 6002–2 and 6010
Barkley Lake
Dover Co: Stewart TN 37058–
Location: 3½ miles south of village of Tabaccoport
Landholding Agency: COE
Property Number: 31199010928
Status: Excess
Comment: 100.86 acres; subject to existing easements

Tract 11516
Barkley Lake
Ashland City Co: Dickson TN 37015–
Location: ½ mile downstream from Cheatham Dam
Landholding Agency: COE
Property Number: 31199010929
Status: Excess
Comment: 26.25 acres; subject to existing easements

Tract 2319
J. Percy Priest Dam and Resorvoir
Murfreesboro Co: Rutherford TN 37130–
Location: West of Buckeye Bottom Road
Landholding Agency: COE
Property Number: 31199010930
Status: Excess
Comment: 14.48 acres; subject to existing easements

Tract 2227
J. Percy Priest Dam and Resorvoir
Murfreesboro Co: Rutherford TN 37130–
Location: Old Jefferson Pike
Landholding Agency: COE
Property Number: 31199010931
Status: Excess
Comment: 2.27 acres; subject to existing easements

Tract 2107
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130–
Location: Across Fall Creek near Fall Creek camping area.
Landholding Agency: COE
Property Number: 31199010932
Status: Excess
Comment: 14.85 acres; subject to existing easements

Tracts 2601, 2602, 2603, 2604
Cordell Hull Lake and Dam Project
Doe Row Creek
Gainesboro Co: Jackson TN 38562–
Location: TN Highway 56
Landholding Agency: COE
Property Number: 31199010933
Status: Unutilized
Comment: 11 acres; subject to existing easements

Tract 1911
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130–
Location: East of Lamar Road
Landholding Agency: COE
Property Number: 31199010934
Status: Excess
Comment: 6.92 acres; subject to existing easements

Tract 2321
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130–
Location: South of Old Jefferson Pike
Landholding Agency: COE
Property Number: 31199010935
Status: Excess
Comment: 12 acres; subject to existing easements

Tract 7206
Barkley Lake
Dover Co: Stewart TN 37058–
Location: 2½ miles SE of Dover, TN.
Landholding Agency: COE
Property Number: 31199010936
Status: Excess
Comment: 10.15 acres; subject to existing easements

Tracts 8813, 8814
Barkley Lake
Cumberland Co: Stewart TN 37050–
Location: 1½ miles East of Cumberland City.
Landholding Agency: COE
Property Number: 31199010937
Status: Excess

Comment: 96 acres; subject to existing easements

Tract 8911
Barkley Lake
Cumberland City Co: Montgomery TN 37050–
Location: 4 miles east of Cumberland City.
Landholding Agency: COE
Property Number: 31199010938
Status: Excess
Comment: 7.7 acres; subject to existing easements

Tract 11503
Barkley Lake
Ashland City Co: Cheatham TN 37015–
Location: 2 miles downstream from Cheatham Dam.
Landholding Agency: COE
Property Number: 31199010939
Status: Excess
Comment: 1.1 acres; subject to existing easements

Tracts 11523, 11524
Barkley Lake
Ashland City Co: Cheatham TN 37015–
Location: 2½ miles downstream from Cheatham Dam.
Landholding Agency: COE
Property Number: 31199010940
Status: Excess
Comment: 19.5 acres; subject to existing easements

Tract 6410
Barkley Lake
Bumpus Mills Co: Stewart TN 37028–
Location: 4½ miles SW. of Bumpus Mills.
Landholding Agency: COE
Property Number: 31199010941
Status: Excess
Comment: 17 acres; subject to existing easements

Tract 9707
Barkley Lake
Palmyer Co: Montgomery TN 37142–
Location: 3 miles NE of Palmyer, TN. Highway 149
Landholding Agency: COE
Property Number: 31199010943
Status: Excess
Comment: 6.6 acres; subject to existing easements

Tract 6949
Barkley Lake
Dover Co: Stewart TN 37058–
Location: 1½ miles SE of Dover, TN.
Landholding Agency: COE
Property Number: 31199010944
Status: Excess
Comment: 29.67 acres; subject to existing easements

Tracts 6005 and 6017
Barkley Lake
Dover Co: Stewart TN 37058–
Location: 3 miles south of Village of Tobaccoport.
Landholding Agency: COE
Property Number: 31199011173
Status: Excess
Comment: 5 acres; subject to existing easements

Tracts K–1191, K–1135
Old Hickory Lock and Dam
Hartsville Co: Trousdale TN 37074–
Landholding Agency: COE
Property Number: 31199130007
Status: Underutilized
Comment: 54 acres, (portion in floodway), most recent use—recreation

Tract A–102
Dale Hollow Lake & Dam Project
Canoe Ridge, State Hwy 52
Celina Co: Clay TN 38551–
Landholding Agency: COE
Property Number: 31199140006
Status: Underutilized
Comment: 351 acres, most recent use—hunting, subject to existing easements

Tract A–120
Dale Hollow Lake & Dam Project
Swann Ridge, State Hwy No. 53
Celina Co: Clay TN 38551–
Landholding Agency: COE
Property Number: 31199140007
Status: Underutilized
Comment: 883 acres, most recent use—hunting, subject to existing easements

Tract D–185
Dale Hollow Lake & Dam Project
Ashburn Creek, Hwy No. 53
Livingston Co: Clay TN 38570–
Landholding Agency: COE
Property Number: 31199140010
Status: Underutilized
Comment: 97 acres, most recent use—hunting, subject to existing easements

Utah

DOE Remediated Resident Site
549 East Clay Hill Drive
Monticello Co: San Juan UT 84535–
Landholding Agency: GSA
Property Number: 54200130011
Status: Surplus
Comment: 0.873 acres
GSA Number: 7–B–UT–0516

Suitable/Unavailable Properties

Buildings (by State)

California

Santa Fe Flood Control Basin
Irwindale Co: Los Angeles CA 91706–
Landholding Agency: COE
Property Number: 31199011298
Status: Unutilized
Comment: 1400 sq. ft.; 1 story stucco; needs rehab; termite damage; secured area with alternate access

Illinois

Bldg. 7
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 31199010001
Status: Unutilized
Comment: 900 sq. ft.; 1 floor wood frame; most recent use—residence

Bldg. 6
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 31199010002
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame; most recent use—residence

Bldg. 5
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 31199010003
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame; most recent use—residence

Bldg. 4
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 31199010004
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame; most recent use—residence

Bldg. 3
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 31199010005
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame

Bldg. 2
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 31199010006
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame; most recent use—residence

Bldg. 1
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 31199010007
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame; most recent use—residence

Ohio

Bldg.
Berlin Lake
7400 Bedell Road
Berlin Center Co: Mahoning OH 44401–9797
Landholding Agency: COE
Property Number: 31199640001
Status: Unutilized
Comment: 1420 sq. ft., 2-story brick w/garage and basement, most recent use—residential, secured w/alternate access

Pennsylvania

Tract 353
Grays Landing Lock & Dam Project
Greensboro Co: Greene PA 15338–
Landholding Agency: COE
Property Number: 31199430019
Status: Unutilized
Comment: 812 sq. ft., 2-story, log structure, needs repair, most recent use—residential, if used for habitation must be flood proofed or removed off-site

Tract 403A
Grays Landing Lock & Dam Project
Greensboro Co: Greene PA 15338–

Landholding Agency: COE
Property Number: 31199430021
Status: Unutilized
Comment: 620 sq. ft., 2-story, needs repair, most recent use—residential, if used for habitation must be flood proofed or removed off-site

Tract 403B
Grays Landing Lock & Dam Project
Greensboro Co: Greene PA 15338–
Landholding Agency: COE
Property Number: 31199430022
Status: Unutilized
Comment: 1600 sq. ft., 2-story, brick structure, needs repair, most recent use—residential, if used for habitation must be flood proofed or removed off-site

Tract 403C
Grays Landing Lock & Dam Project
Greensboro Co: Greene PA 15338–
Landholding Agency: COE
Property Number: 31199430023
Status: Unutilized
Comment: 672 sq. ft., 2-story carriage house/stable barn type structure, needs repair, most recent use—storage/garage, if used for habitation must be flood proofed or removed

Tract 434
Grays Landing Lock & Dam Project
Greensboro Co: Greene PA 15338–
Landholding Agency: COE
Property Number: 31199430024
Status: Unutilized
Comment: 1059 sq. ft., 2-story, wood frame, 2 apt. units, historic property, if used for habitation must be flood proofed or removed off-site

Tract No. 224
Grays Landing Lock & Dam Project
Greensboro Co: Green PA 15338–
Landholding Agency: COE
Property Number: 31199440001
Status: Unutilized
Comment: 1040 sq. ft., 2 story bldg., needs repair, historic struct., flowage easement, if habitation is desired property will be required to be flood proofed or removed off site

Wisconsin

Former Lockmaster's Dwelling
DePere Lock
100 James Street
De Pere Co: Brown WI 54115–
Landholding Agency: COE
Property Number: 31199011526
Status: Unutilized
Comment: 1224 sq. ft.; 2 story brick/wood frame residence; needs rehab; secured area with alternate access.

Land (by State)

Georgia

Land—St. Simons Boathouse
St. Simons Island Co: Glynn GA 31522–0577
Landholding Agency: DOT
Property Number: 87199540003
Status: Unutilized
Comment: .08 acres, most recent use—pier and dockage for Coast Guard boats

Illinois

Lake Shelbyville
Shelbyville Co: Shelby & Moultrie IL 62565–9804
Landholding Agency: COE
Property Number: 31199430021
Status: Unutilized
Comment: 5 parcels of land equalling 0.70 acres, improved w/4 small equipment storage bldgs. and a small access road, easement restrictions.

Pennsylvania

East Branch Clarion River Lake
Wilcox Co: Elk PA
Location: Free camping area on the right bank off entrance roadway.
Landholding Agency: COE
Property Number: 31199011012
Status: Underutilized
Comment: 1 acre; most recent use—free campground

Dashields Locks and Dam (Glenwillard, PA)
Crescent Twp. Co: Allegheny PA 15046–0475
Landholding Agency: COE
Property Number: 31199210009
Status: Unutilized
Comment: 0.58 acres, most recent use—baseball field

Texas

Parcel #222
Lake Texoma
Co: Grayson TX
Location: C. Meyerheim survey A–829 J. Hamilton survey A–529
Landholding Agency: COE
Property Number: 31199010421
Status: Excess
Comment: 52.80 acres; most recent use—recreation

Suitable/To Be Excessed

Buildings (by State)

Massachusetts

Cuttyhunk Boathouse
South Shore of Cuttyhunk Pond
Gosnold Co: Dukes MA 02713–
Landholding Agency: DOT
Property Number: 87199310001
Status: Unutilized
Comment: 2700 sq. ft., wood frame, one story, needs rehab, limited utilities, off-site use only

Nauset Beach Light
Nauset Beach Co: Barnstable MA
Landholding Agency: DOT
Property Number: 87199420001
Status: Unutilized
Comment: 48 foot tower, cylindrical cast iron, most recent use—aid to navigation

Light Tower, Highland Light
Near Rt. 6, 9 miles south of Race Point
North Truro Co: Barnstable MA 02652–
Landholding Agency: DOT
Property Number: 87199430005
Status: Excess
Comment: 66 ft. tower, 14′9″ diameter, brick structure, scheduled to be vacated 9/94

Keepers Dwelling
Highland Light
Near Rt. 6, 9 miles south of Race Point
North Truro Co: Barnstable MA 02652–
Landholding Agency: DOT
Property Number: 87199430006
Status: Excess
Comment: 1160 sq. ft., 2-story wood frame, attached to light tower, scheduled to be vacated 9/94

Duplex Housing Unit
Highland Light
Near Rt. 6, 9 miles south of Race Point
North Truro Co: Barnstable MA 02652–
Landholding Agency: DOT
Property Number: 87199430007
Status: Excess Comment: 2 living units, 930 sq. ft. each, 1-story each, located on eroding ocean bluff, scheduled to be vacated 9/94

Nahant Towers
Nahant Co: Essex MA
Landholding Agency: DOT
Property Number: 87199530001
Status: Unutilized
Comment: 196 sq. ft., 8-story observation tower

South Dakota

Family Residence
Oahe Dam/Lake Oahe Proj
2412 East Reen St.
Pierre Co: SD 57501–
Landholding Agency: COE
Property Number: 31200040016
Status: Excess
Comment: 912 sq. ft., possible asbestos/lead paint, off-site use only

Family Residence
Oahe Dam/Lake Oahe Proj
914 South Arthur Ave
Pierre Co: SD 57501–
Landholding Agency: COE
Property Number: 31200040017
Status: Excess
Comment: 1248 sq. ft., possible asbestos/lead paint, off-site use only

Family Residence
Oahe Dam/Lake Oahe Proj
917 South McKinley Ave
Pierre Co: SD 57501–
Landholding Agency: COE
Property Number: 31200040018
Status: Excess
Comment: 1488 sq. ft., possible asbestos/lead paint, off-site use only

Land (by State)

Alaska

Gibson Cove Tract
Kodiak Co: AK 99619–
Landholding Agency: DOT
Property Number: 87199920001
Status: Unutilized
Comment: 37.55 acres, undeveloped land

Georgia

Lake Sidney Lanier
Co: Forsyth GA 30130–
Location: Located on Two Mile Creek adj. to State Route 369
Landholding Agency: COE
Property Number: 31199440010
Status: Unutilized
Comment: 0.25 acres, endangered plant species

Lake Sidney Lanier-3 parcels
Gainesville Co: Hall GA 30503–
Location: Between Gainesville H.S. and State Route 53 By-Pass
Landholding Agency: COE
Property Number: 31199440011
Status: Unutilized
Comment: 3 parcels totalling 5.17 acres, most recent use—buffer zone, endangered plant species

Indiana

Brookville Lake—Land
Liberty Co: Union IN 47353–
Landholding Agency: COE
Property Number: 31199440009
Status: Unutilized
Comment: 6.91 acres, limited utilities

Kansas

Parcel #1
Fall River Lake
Section 26
Co: Greenwood KS
Landholding Agency: COE
Property Number: 31199010065
Status: Unutilized
Comment: 126.69 acres; most recent use—recreation and leased cottage sites.

Parcel No. 2, El Dorado Lake
Approx. 1 mi east of the town of El Dorado
Co: Butler KS
Landholding Agency: COE
Property Number: 31199210005
Status: Unutilized
Comment: 11 acres, part of a relocated railroad bed, rural area

Massachusetts

Buffumville Dam
Flood Control Project
Gale Road
Carlton Co: Worcester MA 01540–0155
Location:
Portion of tracts B–200, B–248, B–251, B–204, B–247, B–200 and B–256
Landholding Agency: COE
Property Number: 31199010016
Status: Excess
Comment: 1.45 acres.

Minnesota

Tract #3
Lac Qui Parle Flood Control Project
County Rd. 13
Watson Co: Lac Qui Parle MN 56295–
Landholding Agency: COE
Property Number: 31199340006
Status: Unutilized
Comment: approximately 2.9 acres, fallow land

Tract #34
Lac Qui Parle Flood Control Project
Marsh Lake
Watson Co: Lac Qui Parle MN 56295–
Landholding Agency: COE
Property Number: 31199340007
Status: Unutilized
Comment: approx. 8 acres, fallow land

Tennessee

Tract D–456
Cheatham Lock and Dam
Ashland Co: Cheatham TN 37015–
Location: Right downstream bank of Sycamore Creek.
Landholding Agency: COE
Property Number: 31199010942
Status: Excess
Comment: 8.93 acres; subject to existing easements.

Texas

Corpus Christi Ship Channel
Corpus Christi Co: Neuces TX
Location: East side of Carbon Plant Road, approx. 14 miles NW of downtown Corpus Christi
Landholding Agency: COE
Property Number: 31199240001
Status: Unutilized
Comment: 4.4 acres, most recent use—farm land.

Unsuitable Properties

Buildings (by State)

Alabama

Dwelling A
USCG Mobile Pt. Station
Ft. Morgan
Gulfshores Co: Baldwin AL 36542–
Landholding Agency: OT
Property Number: 87199120001
Status: Excess
Reason: Floodway

Dwelling B
USCG Mobile Pt. Station
Ft. Morgan
Gulfshores Co: Baldwin AL 36542–
Landholding Agency: DOT
Property Number: 87199120002
Status: Excess
Reason: Floodway

Oil House
USCG Mobile Pt. Station
Ft. Morgan
Gulfshores Co: Baldwin AL 36542–
Landholding Agency: DOT
Property Number: 87199120003
Status: Excess
Reason: Floodway

Garage
USCG Mobile Pt. Station
Ft. Morgan
Gulfshores Co: Baldwin AL 36542–
Landholding Agency: DOT
Property Number: 87199120004
Status: Excess
Reason: Floodway

Shop Building
USCG Mobile Pt. Station
Ft. Morgan
Gulfshores Co: Baldwin AL 36542–
Landholding Agency: DOT
Property Number: 87199120005
Status: Excess
Reason: Floodway

Alaska

Bldg. 19
USCG Support Center
Kodiak Co: Kodiak Island AK 99619–5000
Landholding Agency: DOT
Property Number: 87199210128
Status: Excess
Reasons: Within airport runway clear zone Extensive deterioration; Secured Area

Bldg. 18
USCG Support Center
Kodiak Co: Kodiak Island AK 99619–5000
Landholding Agency: DOT
Property Number: 87199210132
Status: Excess
Reasons: Within airport runway clear zone Secured Area
GSA Number: U–ALAS–655A

Bldg. A512
USCG Support Center
Kodiak Co: Kodiak Island AK 99619–5000
Landholding Agency: DOT
Property Number: 87199210133
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Within airport runway clear zone; Secured Area

Bldg. R1, Holiday Beach
U.S. Coast Guard Support Center
Kodiak Co: Kodiak Island AK 99619–5014
Landholding Agency: DOT
Property Number: 87199310014
Status: Unutilized
Reason: Secured Area

Bldg. 624
U.S. Coast Guard Support Center
Kodiak Co: Kodiak Island AK 99619–5014
Landholding Agency: DOT
Property Number: 87199310021
Status: Unutilized
Reasons: Within airport runway clear zone; Secured Area

Bldg. 524A
USCG ISC Kodiak
Kodiak Co: Kodiak Is. Bor. AK 99619–
Landholding Agency: DOT
Property Number: 87199710004
Status: Excess
Reasons: Floodway; Secured Area

Bldg. R13, USCG ISC Kodiak
Holiday Beach
Kodiak Co: Kodiak Is Bor AK 99619–
Landholding Agency: DOT
Property Number: 87199720003
Status: Excess
Reason: Secured Area

Bldg. 172, USCG ISC Kodiak
Nyman's Peninsula
Kodiak Co: Kodiak Is Bor AK 99619–
Landholding Agency: DOT
Property Number: 87199720004
Status: Excess
Reason: Secured Area

Bldg. 160, USCG ISC Kodiak
Comsta/Buskin Lake
Kodiak Co: Kodiak Is Bor AK 99619–
Landholding Agency: DOT
Property Number: 87199720005
Status: Excess
Reasons: Secured Area; Extensive deterioration

''Gazebo''
Coast Guard
Cordova Co: AK 99574–
Landholding Agency: DOT
Property Number: 87200010002
Status: Unutilized
Reason: Extensive deterioration

Boathouse
Coast Guard Station Ketchikan
Ketchikan Co: AK 99901–
Landholding Agency: DOT
Property Number: 87200020001
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 23
USCG Integrated Support Command
Kodiak Co: Kodiak Island AK 99619–
Landholding Agency: DOT
Property Number: 87200110009
Status: Excess
Reason: Extensive deterioration

Bldg. 25
USCG Integrated Support Command
Kodiak Co: Kodiak Island AK 99619–
Landholding Agency: DOT
Property Number: 87200110010

Status: Excess
Reason: Extensive deterioration

Bldg. 53
USCG Integrated Support Command
Kodiak Co: Kodiak Island AK 99619–
Landholding Agency: DOT
Property Number: 87200110011
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Bldg. 52
Integrated Support Command
Kodiak Co: AK 99615–
Landholding Agency: DOT
Property Number: 87200110012
Status: Unutilized
Reason: Extensive deterioration

Barracks
LORAN Station
Sitkinak Island Co: AK
Landholding Agency: DOT
Property Number: 87200120007
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Floodway; Extensive deterioration

Incinerator Bldg.
LORAN Station
Sitkinak Island Co: AK–
Landholding Agency: DOT
Property Number: 87200120008
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Floodway; Extensive deterioration

Signal/Power Bldg.
LORAN Station
Sitkinak Island Co: AK–
Landholding Agency: DOT
Property Number: 87200120009
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Floodway; Extensive deterioration

Transmitter Bldg.
LORAN Station
Sitkinak Island Co: AK–
Landholding Agency: DOT
Property Number: 87200120010
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Floodway; Extensive deterioration

Waste Water Treatment Bldg.
LORAN Station
Sitkinak Island Co: AK –
Landholding Agency: DOT
Property Number: 87200120011
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Floodway; Extensive deterioration

Arkansas

Dwelling
Bull Shoals Lake/Dry Run Road
Oakland Co: Marion AR 72661–
Landholding Agency: COE
Property Number: 31199820001
Status: Unutilized
Reason: Extensive deterioration

California

Soil & Materials Testing Lab
Sausalito Co: CA 00000–
Landholding Agency: COE
Property Number: 31199920002
Status: Excess
Reason: contamination

Parker Dam Govt Housing Camp
Township 2 North
San Bernardino Co: CA 92401–
Landholding Agency: Interior
Property Number: 61199930001
Status: Excess
Reason: Extensive deterioration

Bldg. 208
Whiskey Creek
Whiskeytown Co: Shasta CA 96095–
Landholding Agency: Interior
Property Number: 61200120027
Status: Unutilized
Reason: Extensive deterioration

Bldg. 4204
8178 River Street
Yosemite Co: Mariposa CA 95389–
Landholding Agency: Interior
Property Number: 61200130005
Status: Unutilized
Reason: Extensive deterioration

Bldg. 4015
7935 Forest Drive
Yosemite Co: Mariposa CA 95389–
Landholding Agency: Interior
Property Number: 61200130006
Status: Unutilized
Reason: Extensive deterioration

Madden Garage 2625 Spelt Rd.
Yosemite Co: Mariposa CA 95389–
Landholding Agency: Interior
Property Number: 61200130007
Status: Unutilized
Reason: Extensive deterioration

Bldg. 4019
2625 Spelt Rd.
Yosemite Co: Mariposa CA 95389–
Landholding Agency: Interior
Property Number: 61200130008
Status: Unutilized
Reason: Extensive deterioration

Bldg. 6202/D–2
Davison Ranch Complex
Orick Co: Humboldt CA–
Landholding Agency: Interior
Property Number: 61200130009
Status: Excess
Reason: Extensive deterioration

Bldgs. 11070, 11080
Naval Air Weapons Station
China Lake Co: CA 93555–6100
Landholding Agency: Navy
Property Number: 77200130025
Status: Excess
Reason: Extensive deterioration

10 Bldg.
USCG Station Humboldt Bay
Samoa Co: Humboldt CA 95564–9999
Landholding Agency: DOT
Property Number: 87199440027
Status: Excess
Reason: Extensive deterioration
Comment: Land to be relinquished to BLM (Public Domain Land)

Colorado

Alemeda Facility
350 S. Santa Fe Drive
Denver Co: Denver CO 80223–
Landholding Agency: DOT
Property Number: 87199010014
Status: Unutilized
Reason: Other environmental
Comment: contamination

Connecticut

Hezekiah S. Ramsdell Farm
West Thompson Lake
North Grosvenordale Co: Windham CT 06255–9801
Landholding Agency:: COE
Property Number: 31199740001
Status: Unutilized
Reasons: Floodway, Extensive deterioration

Falkner Island Light
U.S. Coast Guard
Guilford Co: New Haven CT 06512–
Landholding Agency: DOT
Property Number: 87199240031
Status: Unutilized
Reason: Floodway

Florida

Bldg. #3, Recreation Cottage
USCG Station
Marathon Co: Monroe FL 33050–
Landholding Agency: DOT
Property Number: 87199210008
Status: Unutilized
Reasons: Floodway, Secured Area

Bldg. 103, Trumbo Point
Key West Co: Monroe FL 33040–
Landholding Agency: DOT
Property Number: 87199230001
Status: Unutilized
Reasons: Floodway, Secured Area

Exchange Building
St. Petersburg Co: Pinellas FL 33701–
Landholding Agency: DOT
Property Number: 87199410004
Status: Unutilized
Reason: Floodway

9988 Keepers Quarters A
Cape San Blas
Port St. Joe Co: Gulf FL
Landholding Agency: DOT
Property Number: 87199440009
Status: Underutilized
Reasons: Floodway, Secured Area

9989 Keepers Quarters B
Cape San Blas
Port St. Joe Co: Gulf FL
Landholding Agency: DOT
Property Number: 87199440010
Status: Underutilized
Reasons: Floodway, Secured Area

9990 Bldg.
Cape San Blas
Port St. Joe Co: Gulf FL
Landholding Agency: DOT
Property Number: 87199440011
Status: Underutilized
Reasons: Floodway, Secured Area

9991 Plant Bldg.
Cape San Blas
Port St. Joe Co: Gulf FL
Landholding Agency: DOT
Property Number: 87199440012
Status: Underutilized
Reasons: Floodway, Secured Area

9992 Shop Bldg.
Cape San Blas
Port St. Joe Co: Gulf FL
Landholding Agency: DOT
Property Number: 87199440013

Status: Underutilized
Reasons: Floodway, Secured Area

9993 Admin. Bldg.
Cape San Blas
Port St. Joe Co: Gulf FL
Landholding Agency: DOT
Property Number: 87199440014
Status: Underutilized
Reasons: Floodway, Secured Area

9994 Water Pump Bldg.
Cape San Blas
Port St. Joe Co: Gulf FL
Landholding Agency: DOT
Property Number: 87199440015
Status: Underutilized
Reasons: Floodway, Secured Area

Storage Bldg.
Cape San Blas
Port St. Joe Co: Gulf FL
Landholding Agency: DOT
Property Number: 87199440016
Status: Underutilized
Reasons: Floodway, Secured Area

9999 Storage Bldg.
Cape San Blas
Port St. Joe Co: Gulf FL
Landholding Agency: DOT
Property Number: 87199440017
Status: Underutilized
Reasons: Floodway, Secured Area

3 Bldgs. and Land
Peanut Island Station
Riveria Beach Co: Palm Beach FL 33419–0909
Landholding Agency: DOT
Property Number: 87199510009
Status: Unutilized
Reasons: Floodway, Secured Area

Cape St. George Lighthouse
Co: Franklin FL 32328–
Landholding Agency: DOT
Property Number: 87199640002
Status: Unutilized
Reason: Extensive deterioration

Maint/Carpentry Shop
USCG Station
St. Petersburg Co: Pinellas FL 33701–
Landholding Agency: DOT
Property Number: 87200120001
Status: Excess
Reasons: Secured Area, Extensive deterioration

Georgia

Coast Guard Station
St. Simons Island
Co: Glynn GA 31522–0577
Landholding Agency: DOT
Property Number: 87199540002
Status: Unutilized
Reason: Extensive deterioration

Hawaii

Bldg. 1740
U.S. Coast Guard Air Station
Barbers Point
Honolulu Co: HI 96862–5800
Landholding Agency: DOT
Property Number: 87199910002
Status: Unutilized
Reason: Secured Area

Phase II Lift Station
Red Hill
Honolulu Co: HI 96818–
Landholding Agency: DOT
Property Number: 87200040001
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material

Bldg. 1820
Coast Guard ISC
Honolulu Co: HI 96819–
Landholding Agency: DOT
Property Number: 87200040002
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Extensive deterioration

Idaho

Bldg. AFD0070
Albeni Falls Dam
Oldtown Co: Bonner ID 83822–
Landholding Agency: COE
Property Number: 31199910001
Status: Unutilized
Reason: Extensive deterioration

Illinois

Calumet Harbor Station
U.S. Coast Guard
Chicago Co: Cook IL
Landholding Agency: DOT
Property Number: 87199310005
Status: Excess
Reason: Secured Area

Indiana

Brookville Lake—Bldg.
Brownsville Rd. in Union
Liberty Co: Union IN 47353–
Landholding Agency: COE
Property Number: 31199440004
Status: Excess
Reason: Extensive deterioration

Kentucky

Spring House
Kentucky River Lock and Dam No. 1
Highway 320
Carrollton Co: Carroll KY 41008–
Landholding Agency: COE
Property Number: 21199040416
Status: Unutilized
Reason: Spring House

Building
Kentucky River Lock and Dam No. 4
1021 Kentucky Avenue
Frankfort Co: Franklin KY 40601–9999
Landholding Agency: COE
Property Number: 21199040417
Status: Unutilized
Reason: Coal Storage

Building
Kentucky River Lock and Dam No. 4
1021 Kentucky Avenue
Frankfort Co: Franklin KY 40601–9999
Landholding Agency: COE
Property Number: 21199040418
Status: Unutilized
Reason: Coal Storage

6-Room Dwelling
Green River Lock and Dam No. 3
Rochester Co: Butler KY 42273–
Location: Off State Hwy 369, which runs off of Western Ky. Parkway
Landholding Agency: COE
Property Number: 31199120010
Status: Unutilized
Reason: Floodway

2-Car Garage
Green River Lock and Dam No. 3
Rochester Co: Butler KY 42273–
Location: Off State Hwy 369, which runs off of Western Ky. Parkway
Landholding Agency: COE
Property Number: 31199120011
Status: Unutilized
Reason: Floodway

Office and Warehouse
Green River Lock and Dam No. 3
Rochester Co: Butler KY 42273–
Location: Off State Hwy 369, which runs off of Western Ky. Parkway
Landholding Agency: COE
Property Number: 31199120012
Status: Unutilized
Reason: Floodway

2 Pit Toilets
Green River Lock and Dam No. 3
Rochester Co: Butler KY 42273–
Landholding Agency: COE
Property Number: 31199120013
Status: Unutilized
Reason: Floodway

Maine

Supply Bldg., Coast Guard
Southwest Harbor
Southwest Harbor Co: Hancock ME 04679–5000
Landholding Agency: DOT
Property Number: 87199240005
Status: Unutilized
Reason: Floodway

Base Exchange, Coast Guard
Southwest Harbor
Southwest Harbor Co: Hancock ME 04679–5000
Landholding Agency: DOT
Property Number: 87199240006
Status: Unutilized
Reason: Floodway

Engineering Shop, Coast Guard
Southwest Harbor
Southwest Harbor Co: Hancock ME 04679–5000
Landholding Agency: DOT
Property Number: 87199240007
Status: Unutilized
Reason: Floodway

Storage Bldg., Coast Guard
Southwest Harbor
Southwest Harbor Co: Hancock ME 04679–5000
Landholding Agency: DOT
Property Number: 87199240008
Status: Unutilized
Reason: Floodway

Squirrel Point Light
U.S. Coast Guard
Phippsburg Co: Sayadahoc ME 04530–
Landholding Agency: DOT
Property Number: 87199240032
Status: Unutilized
Reason: Floodway

Keepers Dwelling
Heron Neck Light, U.S. Coast Guard
Vinalhaven Co: Knox ME 04841–
Landholding Agency: DOT
Property Number: 87199240035
Status: Unutilized
Reason: Extensive deterioration

Fort Popham Light
Phippsburg Co: Sagadahoc ME 04562–
Landholding Agency: DOT

Property Number: 87199320024
Status: Unutilized
Reason: Extensive deterioration

Nash Island Light
U.S. Coast Guard
Addison Co: Washington ME 04606–
Landholding Agency: DOT
Property Number: 87199420005
Status: Unutilized
Reason: Inaccessible

Bldg.—South Portland Base
U.S. Coast Guard
S. Portland Co: Cumberland ME 04106–
Landholding Agency: DOT
Property Number: 87199420006
Status: Unutilized
Reason: Secured Area

Garage—Boothbay Harbor Stat.
Boothbay Harbor Co: Lincoln ME 04538–
Landholding Agency: DOT
Property Number: 87199430001
Status: Unutilized
Reason: Secured Area

Maryland

Bldgs. 38–39, 41, 43–46, 56
U.S. Coast Guard Yard
Baltimore MD 21226–
Landholding Agency: DOT
Property Number: 87199540005
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 53
U.S. Coast Guard Yard
Baltimore MD 21226-
Landholding Agency: DOT
Property Number: 87199540006
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 6
U.S. Coast Guard Yard, 2401 Hawkins Point Rd.
Baltimore MD 21226–1797
Landholding Agency: DOT
Property Number: 87199620001
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 59
U.S. Coast Guard Yard, 2401 Hawkins Point Rd.
Baltimore MD 21226–1797
Landholding Agency: DOT
Property Number: 87199620002
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

5 Bldgs.
USCG Yard
#9, 21, 23, 52, 57
Baltimore Co: MD 21226–
Landholding Agency: DOT
Property Number: 87200120002
Status: Unutilized
Reason: Extensive deterioration

Massachusetts

Bldg. 4, USCG Support Center
Commercial Street
Boston Co: Suffolk MA 02203–
Landholding Agency: DOT
Property Number: 87199240001
Status: Underutilized
Reason: Secured Area

Eastern Point Light
U.S. Coast Guard
Gloucester Co: Essex MA 01930–
Landholding Agency: DOT
Property Number: 87199240029
Status: Unutilized
Reasons: Floodway, Secured Area

Storage Shed
Highland Light
N. Truro Co: Barnstable MA 02652–
Location: DeSoto Johnson KS 66018–
Landholding Agency: DOT
Property Number: 87199430004
Status: Unutilized
Reason: Extensive deterioration

Michigan

Boathouse
Coast Guard Station
East Tawas Co: Iosco MI 48730–
Landholding Agency: DOT
Property Number: 87200040003
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Storage Shed (OS2)
USCG Station
Port Huron Co: St. Clair MI 48060–
Landholding Agency: DOT
Property Number: 87200110036
Status: Unutilized
Reasons: Floodway, Secured Area

Station Bldg.
USCG Station
Manistee Co: MI 49660–
Landholding Agency: DOT
Property Number: 87200120003
Status: Unutilized
Reasons: Floodway, Secured Area

Garage Bldg.
USCG Station
Manistee Co: MI 49660–
Landholding Agency: DOT
Property Number: 87200120004
Status: Unutilized
Reasons: Floodway, Secured Area

Shed/Pump Bldg.
USCG Station
Manistee Co: MI 49660
Landholding Agency: DOT
Property Number: 87200120005
Status: Unutilized
Reasons: Floodway, Secured Area

Storage Bldg.
USCG Station
Manistee Co: MI 49660–
Landholding Agency: DOT
Property Number: 87200120006
Status: Unutilized
Reasons: Floodway, Secured Area

Mississippi

Bldg. 12
Naval Construction Battalion Center
Gulfport Co: Harrison MS 39501–
Landholding Agency: Navy
Property Number: 77200130029
Status: Unutilized
Reason: Secured Area

Bldg. 23
Naval Construction Battalion Center
Gulfport Co: Harrison MS 39501–
Landholding Agency: Navy
Property Number: 77200130030
Status: Unutilized
Reason: Secured Area

Bldg. 36
Naval Construction Battalion Center
Gulfport Co: Harrison MS 39501–
Landholding Agency: Navy
Property Number: 77200130031
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 141
Naval Construction Battalion Center
Gulfport Co: Harrison MS 39501–
Landholding Agency: Navy
Property Number: 77200130032
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 172
Naval Construction Battalion Center
Gulfport Co: Harrison MS 39501–
Landholding Agency: Navy
Property Number: 77200130033
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 185
Naval Construction Battalion Center
Gulfport Co: Harrison MS 39501–
Landholding Agency: Navy
Property Number: 77200130034
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 220
Naval Construction Battalion Center
Gulfport Co: Harrison MS 39501–
Landholding Agency: Navy
Property Number: 77200130035
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 236
Naval Construction Battalion Center
Gulfport Co: Harrison MS 39501–
Landholding Agency: Navy
Property Number: 77200130036
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Structure 427
Naval Construction Battalion Center
Gulfport Co: Harrison MS 39501–
Landholding Agency: Navy
Property Number: 77200130037
Status: Unutilized
Reason: Secured Area

Natchez Moorings
82 L.E. Berry Road
Natchez Co: Adams MS 39121–
Landholding Agency: DOT
Property Number: 87199340002
Status: Unutilized
Reason: Extensive deterioration

Missouri

Rec Office
Harry S. Truman Dam & Reservoir
Osceola Co: St. Clair MO 64776–
Landholding Agency: COE
Property Number: 31200110001
Status: Unutilized
Reason: Extensive deterioration

Privy/Nemo Park
Pomme de Terre Lake
Hermitage Co: MO 65668–
Landholding Agency: COE
Property Number: 31200120001
Status: Excess
Reason: Extensive deterioration

Privy No. 1/Bolivar Park
Pomme de Terre Lake
Hermitage Co: MO 65668–
Landholding Agency: COE
Property Number: 31200120002
Status: Excess
Reason: Extensive deterioration

Privy No. 2/Bolivar Park
Pomme de Terre Lake
Hermitage Co: MO 65668–
Landholding Agency: COE
Property Number: 31200120003
Status: Excess
Reason: Extensive deterioration

New Jersey

Ames Cabin
Old Mine Road
Walpack Co: Sussex NJ 07881–
Landholding Agency: Interior
Property Number: 61200120001
Status: Unutilized
Reason: Extensive deterioration

Jennings House
Old Mine Road
Walpack Co: Sussex NJ 07881–
Landholding Agency: Interior
Property Number: 61200120002
Status: Unutilized
Reason: Extensive deterioration

Lester Cabin
Old Mine Road
Walpack Co: Sussex NJ 07881–
Landholding Agency: Interior
Property Number: 61200120003
Status: Unutilized
Reason: Extensive deterioration

Cassidy Cabin
Blue Mountain Lakes Rd.
Layton Co: Sussex NJ 07851–
Landholding Agency: Interior
Property Number: 61200120004
Status: Unutilized
Reason: Extensive deterioration

Chalker House & Garage
Skyline Drive
Layton Co: Sussex NJ 07851–
Landholding Agency: Interior
Property Number: 61200120005
Status: Unutilized
Reason: Extensive deterioration

Waldman House
14 Walpack-Flatbrookville Rd.
Layton Co: Sussex NJ 07851–
Landholding Agency: Interior
Property Number: 61200120006
Status: Unutilized
Reason: Extensive deterioration

Myra House
off Mountain Rd.
Smithfield Twnshp Co: Monroe NJ 18327–
Landholding Agency: Interior
Property Number: 61200120007
Status: Unutilized
Reason: Extensive deterioration

Piers and Wharf
Station Sandy Hook
Highlands Co: Monmouth NJ 07732–5000
Landholding Agency: DOT
Property Number: 87199240009
Status: Unutilized
Reasons: Secured Area Extensive deterioration

Chapel Hill Front Range Light Tower
Middletown Co: Monmouth NJ 07748–
Landholding Agency DOT
Property Number: 87199440002
Status: Unutilized
Reason: Skeletal tower

Bldg. 103
U.S. Coast Guard Station Sandy Hook
Middleton Co: Monmouth NJ 07737–
Landholding Agency: DOT
Property Number: 87199610002
Status: Unutilized
Reason: Secured Area

Ship Stg. Bldg.
USCG Training Center
Cape May Co: NJ 08204–5002
Landholding Agency: DOT
Property Number: 87200110018
Status: Excess
Reason: Secured Area

Exchange Whse
USCG Training Center
Cape May Co: NJ 08204–5002
Landholding Agency: DOT
Property Number: 87200110019
Status: Excess
Reason: Secured Area

Patrol Boat Bldg.
USCG Training Center
Cape May Co: NJ 08204–5002
Landholding Agency: DOT
Property Number: 87200110020
Status: Excess
Reason: Secured Area

Station Bldg.
USCG Training Center
Cape May Co: NJ 08204–5002
Landholding Agency: DOT
Property Number: 87200110021
Status: Excess
Reason: Secured Area

ANT Bldg.
USCG Training Center
Cape May Co: NJ 08204–5002
Landholding Agency: DOT
Property Number: 87200110022
Status: Excess
Reason: Secured Area

Quarters C
USCG Training Center
Cape May Co: NJ 08204–5002
Landholding Agency: DOT
Property Number: 87200120012
Status: Excess
Reason: Secured Area

Central Heating Plant
USCG Training Center
Cape May Co: NJ 08204–5002
Landholding Agency: DOT
Property Number: 87200120013
Status: Excess
Reason: Secured Area

Hangar/Shop
USCG Training Center
Cape May Co: NJ 08204–5002
Landholding Agency: DOT
Property Number: 87200120014
Status: Excess
Reason: Secured Area

New York

Warehouse
Whitney Lake Project
Whitney Point Co: Broome NY 13862–0706
Landholding Agency: COE
Property Number: 31199630007
Status: Unutilized
Reason: Extensive deterioration

2 Buildings
Ant Saugerties
Saugerties Co: Ulster NY 12477–
Landholding Agency: DOT
Property Number: 87199230005
Status: Unutilized
Reason: Extensive deterioration

Bldg. 606, Fort Totten
New York Co: Queens NY 11359–
Landholding Agency: DOT
Property Number: 87199240020
Status: Unutilized
Reason: Secured Area

Bldg. 607, Fort Totten
New York Co: Queens NY 11359–
Landholding Agency: DOT
Property Number: 87199240021
Status: Unutilized
Reasons: Extensive deterioration Secured Area

Bldg. 605, Fort Totten
New York Co: Queens NY 11359–
Landholding Agency: DOT
Property Number: 87199240022
Status: Unutilized
Reasons: Extensive deterioration Secured Area

Eatons Neck Station
U.S. Coast Guard
Huntington Co: Suffolk NY 11743–
Landholding Agency: DOT
Property Number: 87199310003
Status: Unutilized
Reasons: Secured Area Extensive deterioration

Bldg. 517, USCG Support Center
Governors Island Co: Manhattan NY 10004–
Landholding Agency: DOT
Property Number: 87199320025
Status: Unutilized
Reason: Secured Area

Bldg. 138
U.S. Coast Guard Support Center
Governors Island Co: Manhattan NY 10004–
Landholding Agency: DOT
Property Number: 87199410003
Status: Unutilized
Reason: Secured Area

Bldg. 830
U.S. Coast Guard
Governors Island Co: Manhattan NY 10004–
Landholding Agency: DOT
Property Number: 87199420004
Status: Unutilized
Reason: Secured Area

Bldg. 8
Rosebank—Coast Guard Housing
Staten Island Co: Richmond NY 10301–
Landholding Agency: DOT
Property Number: 87199530009
Status: Unutilized
Reason: Secured Area

Bldg. 7
Rosebank—Coast Guard Housing
Staten Island Co: Richmond NY 10301–
Landholding Agency: DOT

Property Number: 87199530010
Status: Unutilized
Reasons: Secured Area Extensive deterioration

Bldg. 222
Fort Wadsworth
Staten Island Co: Richmond NY 10305–
Landholding Agency: DOT
Property Number: 87199620003
Status: Unutilized
Reason: Secured Area

Bldg. 223
Fort Wadsworth
Staten Island Co: Richmond NY 10305–
Landholding Agency: DOT
Property Number: 87199620004
Status: Unutilized
Reason: Secured Area

Bldg. 205
Fort Wadsworth
Staten Island Co: Richmond NY 10305–
Landholding Agency: DOT
Property Number: 87199620005
Status: Unutilized
Reason: Secured Area

Bldg. 9
U.S. Coast Guard—Rosebank
Staten Island Co: Richmond NY 10301–
Landholding Agency: DOT
Property Number: 87199630027
Status: Excess
Reason: Secured Area

Bldg. 10
U.S. Coast Guard—Rosebank
Staten Island Co: Richmond NY 10301–
Landholding Agency: DOT
Property Number: 87199630028
Status: Excess
Reason: Secured Area

Bldg. 206, Rosebank
Staten Island Co: Richmond NY 10301–
Landholding Agency: DOT
Property Number: 87199630029
Status: Excess
Reason: Secured Area

Cottage
Coast Guard Station
Wellesley Island Co: Jefferson NY 13640–
Landholding Agency: DOT
Property Number: 87199940001
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

North Carolina

Quarters 323
Great Smoky Mtns Natl Pk
Balsam Mtn Co: Swain NC 27819–
Landholding Agency: Interior
Property Number: 61200120022
Status: Excess
Reason: Extensive deterioration

Group Cape Hatteras
Boiler Plant
Buxton Co: Dare NC 27902–0604
Landholding Agency: DOT
Property Number: 87199240018
Status: Unutilized
Reason: Secured Area

Group Cape Hatteras
Bowling Alley
Buxton Co: Dare NC 27902–0604
Landholding Agency: DOT
Property Number: 87199240019
Status: Unutilized
Reason: Secured Area

Bldg. 54
Group Cape Hatteras
Buston Co: Dare NC 27902–0604
Landholding Agency: DOT
Property Number: 87199340004
Status: Unutilized
Reason: Secured Area

Bldg. 83
Group Cape Hatteras
Buxton Co: Dare NC 27902–0604
Landholding Agency: DOT
Property Number: 87199340005
Status: Unutilized
Reason: Secured Area

Water Tanks
Group Cape Hatteras
Buxton Co: Dare NC 27902–0604
Landholding Agency: DOT
Property Number: 87199340006
Status: Unutilized
Reason: Secured Area

USCG Gentian (WLB 290)
Fort Macon State Park
Atlantic Beach Co: Carteret NC 27601–
Landholding Agency: DOT
Property Number: 87199420007
Status: Excess
Reason: Secured Area

Unit #71
Buxton Annex, Cape Kendrick Circle
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 87199530011
Status: Unutilized
Reason: Floodway

Unit #72
Buxton Annex, Cape Kendrick Circle
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 87199530012
Status: Unutilized
Reason: Floodway

Unit #73
Buxton Annex, Cape Kendrick Circle
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 87199530013
Status: Unutilized
Reason: Floodway

Unit #74
Buxton Annex, Cape Kendrick Circle
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 87199530014
Status: Unutilized
Reason: Floodway

Unit #75
Buxton Annex, Cape Kendrick Circle
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 87199530015
Status: Unutilized
Reason: Floodway

Unit #63
Buxton Annex, Anna May Court
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 87199530016
Status: Unutilized
Reason: Floodway

Unit #64
Buxton Annex, Anna May Court
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 87199530017
Status: Unutilized
Reason: Floodway

Unit #76
Buxton Annex, Anna May Court
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 87199530018
Status: Unutilized
Reason: Floodway

Unit #68
Buxton Annex, Anna May Court
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 87199530019
Status: Unutilized
Reason: Floodway

Unit #69
Buxton Annex, Anna May Court
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 87199530020
Status: Unutilized
Reason: Floodway

Unit #70
Buxton Annex, Anna May Court
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 87199530021
Status: Unutilized
Reason: Floodway

Unit #77
Buxton Annex, Old Lighthouse Road
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 87199530022
Status: Unutilized
Reason: Floodway

Unit #78
Buxton Annex, Old Lighthouse Road
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 87199530023
Status: Unutilized
Reason: Floodway

Bldg. 53
Coast Guard Support Center
Elizabeth City Co: Pasquotank NC 27909–5006
Landholding Agency: DOT
Property Number: 87199630022
Status: Unutilized
Reason: Secured Area

Ohio

Lab
Ohio River Division Laboratories
Mariemont Co: Hamilton OH 15227–4217
Landholding Agency: COE
Property Number: 31199510002
Status: Unutilized
Reason: Secured Area

Storage Facility
Ohio River Division Laboratories
Mariemont Co: Hamilton OH 15227–4217
Landholding Agency: COE
Property Number: 31199510003
Status: Unutilized
Reason: Secured Area

Office Building
Ohio River Division Laboratories
Mariemont Co: Hamilton OH 15227–4217
Landholding Agency: COE
Property Number: 31199510004

Status: Unutilized
Reason: Secured Area

Oregon

Bldg.
366 E. Hurlburt
Hermiston Co: Umatilla OR 97838–
Landholding Agency: Interior
Property Number: 61200110007
Status: Unutilized
Reason: Extensive deterioration

Bldg. 8
USCG Tongue Point Moorings
Astoria Co: OR 97103–2099
Landholding Agency: DOT
Property Number: 87199910001
Status: Unutilized
Reason: Extensive deterioration

Duplex
Cape Blanco
Sixes Co: Curry OR 97465–
Landholding Agency: DOT
Property Number: 87199940002
Status: Unutilized
Reason: Extensive deterioration

Pennsylvania

Schneider Cottage
Route 209
Dingman's Ferry Co: Pike PA 18328–
Landholding Agency: Interior
Property Number: 61200120008
Status: Unutilized
Reason: Extensive deterioration

Schneider Farmhouse
Route 209
Dingman's Ferry Co: Pike PA 18328–
Landholding Agency: Interior
Property Number: 61200120009
Status: Unutilized
Reason: Extensive deterioration

Schneider Garage/Shop
Route 209
Dingman's Ferry Co: Pike PA 18328–
Landholding Agency: Interior
Property Number: 61200120010
Status: Unutilized
Reason: Extensive deterioration

Vayda House & Garage
Mary Stuart Rd.
Dingman's Ferry Co: Pike PA 18328–
Landholding Agency: Interior
Property Number: 61200120011
Status: Unutilized
Reason: Extensive deterioration

Puerto Rico

NAFA Warehouse
U.S. Coast Guard Air Station Borinquen
Aquadilla PR 00604–
Landholding Agency: DOT
Property Number: 87199310011
Status: Unutilized
Reason: Secured Area

Storage Equipment Bldg.
U.S. Coast Guard Air Station Borinquen
Aquadilla PR 00604–
Landholding Agency: DOT
Property Number: 87199330001
Status: Unutilized
Reason: Secured Area

Bldg. 115
U.S. Coast Guard Base
San Juan PR 00902–2029
Landholding Agency: DOT
Property Number: 87199510001
Status: Unutilized
Reason: Secured Area

Bldg. 117
U.S. Coast Guard Base
San Juan PR 00902–2029
Landholding Agency: DOT
Property Number: 87199510002
Status: Unutilized
Reason: Secured Area

Bldg. 118
U.S. Coast Guard Base
San Juan PR 00902–2029
Landholding Agency: DOT
Property Number: 87199510003
Status: Unutilized
Reason: Secured Area

Bldg. 119
U.S. Coast Guard Base
San Juan PR 00902–2029
Landholding Agency: DOT
Property Number: 87199510004
Status: Unutilized
Reason: Secured Area

Bldg. 120
U.S. Coast Guard Base
San Juan PR 00902–2029
Landholding Agency: DOT
Property Number: 87199510005
Status: Unutilized
Reason: Secured Area

Bldg. 122
U.S. Coast Guard Base
San Juan PR 00902–2029
Landholding Agency: DOT
Property Number: 87199510006
Status: Unutilized
Reason: Secured Area

Bldg. 128
U.S. Coast Guard Base
San Juan PR 00902–2029
Landholding Agency: DOT
Property Number: 87199510007
Status: Unutilized
Reason: Secured Area

Bldg. 129
U.S. Coast Guard Base
San Juan PR 00902–2029
Landholding Agency: DOT
Property Number: 87199510008
Status: Unutilized
Reason: Secured Area

Rhode Island

Station Point Judith Pier
Narranganset Co: Washington RI 02882–
Landholding Agency: DOT
Property Number: 87199310002
Status: Unutilized
Reason: Extensive deterioration

South Dakota

Mobile Home
Tract L–1295
Oahe Dam
Potter Co: SD 00000–
Landholding Agency: COE
Property Number: 31200030001
Status: Excess
Reason: Extensive deterioration

Tennessee

Bldg. 204
Cordell Hull Lake and Dam Project.
Defeated Creek Recreation Area
Carthage Co: Smith TN 37030–
Location: US Highway 85
Landholding Agency: COE
Property Number: 31199011499
Status: Unutilized
Reason: Floodway

Tract 2618 (Portion)
Cordell Hull Lake and Dam Project
Roaring River Recreation Area
Gainesboro Co: Jackson TN 38562–
Location: TN Highway 135
Landholding Agency: COE
Property Number: 31199011503
Status: Underutilized
Reason: Floodway

Water Treatment Plant
Dale Hollow Lake & Dam Project
Obey River Park, State Hwy 42
Livingston Co: Clay TN 38351–
Landholding Agency: COE
Property Number: 31199140011
Status: Excess
Reason: Water treatment plant

Water Treatment Plant
Dale Hollow Lake & Dam Project
Lillydale Recreation Area, State Hwy 53
Livingston Co: Clay TN 38351–
Landholding Agency: COE
Property Number: 31199140012
Status: Excess
Reason: Water treatment plant

Water Treatment Plant
Dale Hollow Lake & Dam Project
Willow Grove Recreational Area, Hwy No. 53
Livingston Co: Clay TN 38351–
Landholding Agency: COE
Property Number: 31199140013
Status: Excess
Reason: Water treatment plant

5 Bldgs.
Oak Ridge National Lab
#7811, 7819, 7833, 7852, 7860
Oak Ridge Co: Roane TN 37831–
Landholding Agency: Energy
Property Number: 41200130001
Status: Unutilized
Reasons: Contamination, Secured Area, Extensive deterioration

Texas

Tract No. 01–105
Hobbs House
LBJ Natl Historical Pk
Johnson City Co: Blanco TX
Landholding Agency: Interior
Property Number: 61200120023
Status: Unutilized
Reason: Extensive deterioration

Old Exchange Bldg.
U.S. Coast Guard
Galveston Co: Galveston TX 77553–3001
Landholding Agency: DOT
Property Number: 87199310012
Status: Unutilized
Reason: Secured Area

WPB Building
Station Port Isabel
Coast Guard Station
South Padre Island Co: Cameron TX 78597–6497
Landholding Agency: DOT
Property Number: 87199530002
Status: Unutilized
Reason: Floodway

Aton Shops Building
USCG Station Sabine

Sabine Co: Jefferson TX 77655–
Landholding Agency: DOT
Property Number: 87199530003
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

WPB Storage Shed
USCG Station Sabine
Sabine Co: Jefferson TX 77655–
Landholding Agency: DOT
Property Number: 87199530004
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Flammable Storage Building
USCG Station Sabine
Sabine Co: Jefferson TX 77655–
Landholding Agency: DOT
Property Number: 87199530005
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Battery Storage Building
USCG Station Sabine
Sabine Co: Jefferson TX 77655–
Landholding Agency: DOT
Property Number: 87199530006
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Boat House
USCG Station Sabine
Sabine Co: Jefferson TX 77655–
Landholding Agency: DOT
Property Number: 87199530007
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Small Boat Pier
USCG Station Sabine
Sabine Co: Jefferson TX 77655–
Landholding Agency: DOT
Property Number: 87199530008
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 108
Fort Crockett/43rd St. Housing
Galveston Co: Galveston TX 77553–
Landholding Agency: DOT
Property Number: 87199630008
Status: Unutilized
Reason: Extensive deterioration

Utah

Storage Shed/Garage
CR 212
Hovenweep Co: San Juan UT 84534–
Landholding Agency: Interior
Property Number: 61200130010
Status: Excess
Reason: Extensive deterioration

Vermont

Depot Street
Downtown at the Waterfront
Burlington Co: Chittenden VT 05401–5226
Landholding Agency: DOT
Property Number: 87199220003
Status: Excess
Reason: Floodway

Virginia

Bldg. 2331
Marine Corps Base
Quantico Co: VA
Landholding Agency: Navy
Property Number: 77200130038
Status: Excess
Reason: Extensive deterioration

Troop Housing Units
Bldg. 26129
Marine Corps Base
Quantico Co: VA
Landholding Agency: Navy
Property Number: 77200130039
Status: Excess
Reason: Extensive deterioration

Bldg. 3041
Marine Corps Base
Quantico Co: VA 22134–
Landholding Agency: Navy
Property Number: 77200130040
Status: Excess
Reason: Extensive deterioration

Bldg. 3091
Marine Corps Base
Quantico Co: VA 22134–
Landholding Agency: Navy
Property Number: 77200130041
Status: Excess
Reason: Extensive deterioration

Bldgs. 3092, 3093
Marine Corps Base
Quantico Co: VA
Landholding Agency: Navy
Property Number: 77200130042
Status: Excess
Reason: Extensive deterioration

Bldgs. 3234, 3235
Marine Corps Base
Quantico Co: VA 22134–
Landholding Agency: Navy
Property Number: 77200130043
Status: Excess
Reason: Extensive deterioration

Quonset Huts, Camp Upshur
Marine Corps Base
Quantico Co: VA
Landholding Agency: Navy
Property Number: 77200130044
Status: Unutilized
Reason: Extensive deterioration

Bldg. B107
Naval Surface Warfare Center
Dahlgren Co: King George VA 22448–5100
Landholding Agency: Navy
Property Number: 77200130045
Status: Unutilized
Reason: Extensive deterioration

Bldg. B153
Naval Surface Warfare Center
Dahlgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200130046
Status: Unutilized
Reason: Extensive deterioration

Bldg. B166
Naval Surface Warfare Center
Dahlgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200130047
Status: Unutilized
Reason: Extensive deterioration

Bldg. B167
Naval Surface Warfare Center
Dahlgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200130048
Status: Unutilized
Reason: Extensive deterioration

Bldg. B185T
Naval Surface Warfare Center
Dahlgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200130049
Status: Unutilized
Reason: Extensive deterioration

Bldg. B196
Naval Surface Warfare Center
Dahlgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200130050
Status: Unutilized
Reason: Extensive deterioration

Bldg. B244
Naval Surface Warfare Center
Dahlgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200130051
Status: Unutilized
Reason: Extensive deterioration

Bldg. B284
Naval Surface Warfare Center
Dahlgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200130052
Status: Unutilized
Reason: Extensive deterioration

Bldg. B299
Naval Surface Warfare Center
Dahlgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200130053
Status: Unutilized
Reason: Extensive deterioration

Bldg. B313
Naval Surface Warfare Center
Dahlgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200130054
Status: Unutilized
Reason: Extensive deterioration

Bldg. B347
Naval Surface Warfare Center
Dahlgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200130055
Status: Unutilized
Reason: Extensive deterioration

Bldg. B360
Naval Surface Warfare Center
Dahlgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200130056
Status: Unutilized
Reason: Extensive deterioration

Bldg. B410
Naval Surface Warfare Center
Dahlgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200130057
Status: Unutilized
Reason: Extensive deterioration

Bldg. B416
Naval Surface Warfare Center
Dahlgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200130058
Status: Unutilized
Reason: Extensive deterioration

Bldg. B430
Naval Surface Warfare Center
Dahlgren Co: King George VA 22448–

Landholding Agency: Navy
Property Number: 77200130059
Status: Unutilized
Reason: Extensive deterioration

Bldg. B993
Naval Surface Warfare Center
Dahlgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200130060
Status: Unutilized
Reason: Extensive deterioration

Bldg. B1119
Naval Surface Warfare Center
Dahlgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200130061
Status: Unutilized
Reason: Extensive deterioration

Bldg. B1299
Naval Surface Warfare Center
Dahlgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200130062
Status: Unutilized
Reason: Extensive deterioration

Bldg. B1350
Naval Surface Warfare Center
Dahlgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200130063
Status: Unutilized
Reason: Extensive deterioration

Bldg. B1355
Naval Surface Warfare Center
Dahlgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200130064
Status: Unutilized
Reason: Extensive deterioration

Bldg. B1376
Naval Surface Warfare Center
Dahlgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200130065
Status: Unutilized
Reason: Extensive deterioration

Bldg. B1379
Naval Surface Warfare Center
Dahlgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200130066
Status: Unutilized
Reason: Extensive deterioration

Bldg. B1383
Naval Surface Warfare Center
Dahlgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200130067
Status: Unutilized
Reason: Extensive deterioration

Bldg. B1386
Naval Surface Warfare Center
Dahlgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200130068
Status: Unutilized
Reason: Extensive deterioration

Bldg. B9406
Naval Surface Warfare Center
Dahlgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200130069
Status: Unutilized
Reason: Extensive deterioration

Bldg. 052 & Tennis Court
USCG Reserve Training Center
Yorktown Co: York VA 23690–
Landholding Agency: DOT
Property Number: 87199230004
Status: Excess
Reason: Secured Area

Admin. Bldg.
Coast Guard, Group Eastern Shores
Chincoteague Co: Accomack VA 23361–510
Landholding Agency: DOT
Property Number: 87199240014
Status: Unutilized
Reason: Secured Area

Little Creek Station
Navamphib Base, West Annex, U.S. Coast Guard
Norfolk Co: Princess Anne VA 23520–
Landholding Agency: DOT
Property Number: 87199310004
Status: Unutilized
Reason: Secured Area

Operations Bldg.
U.S. Coast Guard Group Hampton Roads
Portsmouth VA 23703–
Landholding Agency: DOT
Property Number: 87199710003
Status: Unutilized
Reason: Secured Area

Bldgs. 63, 115
USCG Training Center
Yorktown Co: York VA 23690–5000
Landholding Agency: DOT
Property Number: 87200110037
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 156
USCG Training Center Yorktown
Yorktown Co: York VA 23690–5000
Landholding Agency: DOT
Property Number: 87200120015
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Washington

Bldg. 0074
North Cascades Natl Park Service Complex
Stehekin Co: Chelan WA 98852–
Landholding Agency: Interior
Property Number: 61200110008
Status: Unutilized
Reason: Extensive deterioration

Bldg. 0048
North Cascades Natl Park Service Complex
Stehekin Co: Chelan WA 98852–
Landholding Agency: Interior
Property Number: 61200110009
Status: Unutilized
Reason: Extensive deterioration

Bldg. 0044
North Cascades Natl Park Service Complex
Stehekin Co: Chelan WA 98852–
Landholding Agency: Interior
Property Number: 61200110010
Status: Unutilized
Reason: Extensive deterioration

Bldg. 0047
North Cascades Natl Park Service Complex
Stehekin Co: Chelan WA 98852–
Landholding Agency: Interior
Property Number: 61200110011
Status: Unutilized
Reason: Extensive deterioration

McKeller's Cabin
North Cascades Natl Park Service Complex
Stehekin Co: Chelan WA 98852–
Landholding Agency: Interior
Property Number: 61200110012
Status: Unutilized
Reason: Extensive deterioration

Bldg. 1170
North Cascades Natl Park Service Complex
Hozomeen Co: Whatcom WA 98852–
Landholding Agency: Interior
Property Number: 61200110013
Status: Unutilized
Reason: Extensive deterioration

Brundage Cabin
3003 Camp David Jr. Rd.
Port Angeles Co: Clallam WA 98362–
Landholding Agency: Interior
Property Number: 61200120014
Status: Unutilized
Reason: Extensive deterioration

Nigro Cabin
2805 East Beach Rd.
Port Angeles Co: Clallam WA 98363–
Landholding Agency: Interior
Property Number: 61200120015
Status: Unutilized
Reason: Extensive deterioration

Pistol Range Bldg.
USCG Port Angeles
Port Angeles Co: Clallam WA 98362–0159
Landholding Agency: DOT
Property Number: 87199630030
Status: Unutilized
Reasons: Within airport runway clear zone, Secured Area, Extensive deterioration

Quarters 8, 10, 12, 14
USCG Station Cape Disappointment
Ilwaco Co: Pacific WA 98624–
Landholding Agency: DOT
Property Number: 87199930001
Status: Unutilized
Reason: Extensive deterioration

Avionics Shop
Coast Guard Air Station
Port Angeles Co: Clallam WA 98362–
Landholding Agency: DOT
Property Number: 87200110023
Status: Unutilized
Reason: Secured Area

Storage Bldg.
Coast Guard Air Station
Port Angeles Co: Clallam WA 98362–
Landholding Agency: DOT
Property Number: 87200110024
Status: Underutilized
Reason: Secured Area

Maint. Work Shop
Coast Guard Air Station
Port Angeles Co: Clallam WA 98362–
Landholding Agency: DOT
Property Number: 87200110025
Status: Underutilized
Reason: Secured Area

West Virginia

Akers House
River Road
Hinton Co: Raleigh WV 25951–
Landholding Agency: Interior
Property Number: 61200120016
Status: Excess
Reason: Extensive deterioration

Wickline House

River Road
Hinton Co: Raleigh WV 25951–
Landholding Agency: Interior
Property Number: 61200120017
Status: Excess
Reason: Extensive deterioration

Burdett Cabin
Army Camp Road
Prince Co: Fayette WV 25907–
Landholding Agency: Interior
Property Number: 61200120018
Status: Excess
Reason: Extensive deterioration

Wisconsin

Rawley Point Light
Two Rivers Co: Manitowoc WI
Landholding Agency: DOT
Property Number: 87199540004
Status: Unutilized
Reasons: Secured Area Extensive deterioration

Land (by State)

Alaska

Russian Creek Aggregate Site
USCG Support Center Kodiak
Kodiak Co: Kodiak AK 99619–
Landholding Agency: DOT
Property Number: 87199440025
Status: Excess
Reason: Floodway

Sargent Creek Aggregate Site
USCG Support Center Kodiak
Kodiak Co: Kodiak AK 99619–
Landholding Agency: DOT
Property Number: 87199440026
Status: Excess
Reason: Floodway

Florida

Land—approx. 220 acres
Cape San Blas
Port St. Joe Co: Gulf FL
Landholding Agency: DOT
Property Number: 87199440018
Status: Underutilized
Reasons: Floodway Secured Area

Kentucky

Tract 4626
Barkley, Lake, Kentucky and Tennessee
Donaldson Creek Launching Area
Cadiz Co: Trigg KY 42211–
Location: 14 miles from US Highway 68.
Landholding Agency: COE
Property Number: 31199010030
Status: Underutilized
Reason: Floodway

Tract AA–2747
Wolf Creek Dam and Lake Cumberland
US HWY. 27 to Blue John Road
Burnside Co: Pulaski KY 42519–
Landholding Agency: COE
Property Number: 31199010038
Status: Underutilized
Reason: Floodway

Tract AA–2726
Wolf Creek Dam and Lake Cumberland
KY HWY. 80 to Route 769
Burnside Co: Pulaski KY 42519–
Landholding Agency: COE
Property Number: 31199010039
Status: Underutilized
Reason: Floodway

Tract 1358
Barkley Lake, Kentucky and Tennessee
Eddyville Recreation Area
Eddyville Co: Lyon KY 42038–
Location: US Highway 62 to state highway 93.
Landholding Agency: COE
Property Number: 31199010043
Status: Excess
Reason: Floodway

Red River Lake Project
Stanton Co: Powell KY 40380–
Location: Exit Mr. Parkway at the Stanton and Slade Interchange, then take SR Hand 15 north to SR 613.
Landholding Agency: COE
Property Number: 31199011684
Status: Unutilized
Reason: Floodway

Barren River Lock & Dam No. 1
Richardsville Co: Warren KY 42270–
Landholding Agency: COE
Property Number: 31199120008
Status: Unutilized
Reason: Floodway

Green River Lock & Dam No. 3
Rochester Co: Butler KY 42273–
Location: Off State Hwy. 369, which runs off of Western Ky. Parkway
Landholding Agency: COE
Property Number: 31199120009
Status: Unutilized
Reason: Floodway

Green River Lock & Dam No. 4
Woodbury Co: Butler KY 42288–
Location: Off State Hwy 403, which is off State Hwy 231
Landholding Agency: COE
Property Number: 31199120014
Status: Underutilized
Reason: Floodway

Green River Lock & Dam No. 5
Readville Co: Butler KY 42275–
Location: Off State Highway 185
Landholding Agency: COE
Property Number: 31199120015
Status: Unutilized
Reason: Floodway

Green River Lock & Dam No. 6
Brownsville Co: Edmonson KY 42210–
Location: Off State Highway 259
Landholding Agency: COE
Property Number: 31199120016
Status: Underutilized
Reason: Floodway

Vacant land west of locksite
Greenup Locks and Dam
5121 New Dam Road
Rural Co: Greenup KY 41144–
Landholding Agency: COE
Property Number: 31199120017
Status: Unutilized
Reason: Floodway

Tract 6404, Cave Run Lake
U.S. Hwy 460
Index Co: Morgan KY
Landholding Agency: COE
Property Number: 31199240005
Status: Underutilized
Reason: Floodway

Tract 6803, Cave Run Lake
State Road 1161
Pomp Co: Morgan KY
Landholding Agency: COE
Property Number: 31199240006
Status: Underutilized
Reason: Floodway

8.04 acres
Taylorsville Lake Project
Taylorsville Co: Spenser KY 40071–9801
Landholding Agency: COE
Property Number: 31199840003
Status: Unutilized
Reason: inaccessible

Patriot Boat Ramp
Land
Wade & Goose Creeks
Patriot Co: Boone KY 00000–
Landholding Agency: COE
Property Number: 31200010003
Status: Unutilized
Reason: Floodway

Maine

Parcel 2
Naval Air Station
Canam Drive
Topsham Co: Cumberland ME 04086–
Landholding Agency: Navy
Property Number: 77200130026
Status: Unutilized
Reason: Secured Area

Parcel 3
Naval Air Station
Canam Drive
Topsham Co: Cumberland ME 04086–
Landholding Agency: Navy
Property Number: 77200130027
Status: Unutilized
Reason: Secured Area

Parcel 5
Naval Air Station
Canam Drive
Topsham Co: Cumberland ME 04086–
Landholding Agency: Navy
Property Number: 77200130028
Status: Unutilized
Reason: Secured Area

Maryland

Tract 131R
Youghiogheny River Lake, Rt. 2, Box 100
Friendsville Co: Garrett MD
Landholding Agency: COE
Property Number: 31199240007
Status: Underutilized
Reason: Floodway

Michigan

Middle Marker Facility
Yipsilanti Co: Washtenaw MI 48198–
Location: 549 ft. north of intersection of Coolidge and Bradley Ave. on East side of street
Landholding Agency: DOT
Property Number: 87199120006
Status: Unutilized
Reason: Within airport runway clear zone

Minnesota

Parcel G
Pine River
Cross Lake Co: Crow Wing MN 56442–
Location: 3 miles from city of Cross Lake between highways 6 and 371.
Landholding Agency: COE
Property Number: 31199011037
Status: Excess
Reason: highway right of way

Mississippi

Parcel 1

Grenada Lake
Section 20
Grenada Co: Grenada MS 38901–0903
Landholding Agency: COE
Property Number: 31199011018
Status: Underutilized
Reason: Within airport runway clear zone

Missouri

Ditch 19, Item 2, Tract No.230
St. Francis Basin Project 2½ miles west of Malden
Co: Dunklin MO
Landholding Agency: COE
Property Number: 31199130001
Status: Unutilized
Reason: Floodway

Ohio

Mosquito Creek Lake
Everett Hull Road Boat Launch
Cortland Co: Trumbull OH 44410–9321
Landholding Agency: COE
Property Number: 31199440007
Status: Underutilized
Reason: Floodway

Mosquito Creek Lake
Housel—Craft Rd., Boat Launch
Cortland Co: Trumbull OH 44410–9321
Landholding Agency: COE
Property Number: 31199440008
Status: Underutilized
Reason: Floodway

36 Site Campground
German Church Campground
Berlin Center Co: Portage OH 44401–9707
Landholding Agency: COE
Property Number: 31199810001
Status: Unutilized
Reason: Floodway

Pennsylvania

Lock and Dam #7
Monongahela River
Greensboro Co: Greene PA
Location: Left hand side of entrance roadway to project.
Landholding Agency: COE
Property Number: 31199011564
Status: Unutilized
Reason: Floodway

Mercer Recreation Area
Shenango Lake
Transfer Co: Mercer PA 16154–
Landholding Agency: COE
Property Number: 31199810002
Status: Unutilized
Reason: Floodway

Tract No. B–212C
Upstream from Gen. Jadwin Dam & Reservoir
Honesdale Co: Wayne PA 18431–
Landholding Agency: COE
Property Number: 31200020005
Status: Unutilized
Reason: Floodway

Puerto Rico

119.3 acres
Culebra Island PR 00775–
Landholding Agency: Interior
Property Number: 61199210001
Status: Excess
Reason: Floodway

Tennessee

Brooks Bend
Cordell Hull Dam and Reservoir
Highway 85 to Brooks Bend Road
Gainesboro Co: Jackson TN 38562–
Location: Tracts 800, 802–806, 835–837, 900–902, 1000–1003, 1025
Landholding Agency: COE
Property Number: 21199040413
Status: Underutilized
Reason: Floodway

Cheatham Lock and Dam
Highway 12
Ashland City Co: Cheatham TN 37015–
Location: Tracts E–513, E–512–1 and E–512–2
Landholding Agency: COE
Property Number: 21199040415
Status: Underutilized
Reason: Floodway

Tract 6737
Blue Creek Recreation Area
Barkley Lake, Kentucky and Tennessee
Dover Co: Stewart TN 37058–
Location: U.S. Highway 79/TN Highway 761
Landholding Agency: COE
Property Number: 31199011478
Status: Underutilized
Reason: Floodway

Tracts 3102, 3105, and 3106
Brimstone Launching Area
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38562–
Location: Big Bottom Road
Landholding Agency: COE
Property Number: 31199011479
Status: Excess
Reason: Floodway

Tract 3507
Proctor Site
Cordell Hull Lake and Dam Project
Celina Co: Clay TN 38551–
Location: TN Highway 52
Landholding Agency: COE
Property Number: 31199011480
Status: Unutilized
Reason: Floodway

Tract 3721
Obey
Cordell Hull Lake and Dam Project
Celina Co: Clay TN 38551–
Location: TN Highway 53
Landholding Agency: COE
Property Number: 31199011481
Status: Unutilized
Reason: Floodway

Tracts 608, 609, 611 and 612
Sullivan Bend Launching Area
Cordell Hull Lake and Dam Project
Carthage Co: Smith TN 37030–
Location: Sullivan Bend Road
Landholding Agency: COE
Property Number: 31199011482
Status: Underutilized
Reason: Floodway

Tract 920
Indian Creek Camping Area
Cordell Hull Lake and Dam Project
Granville Co: Smith TN 38564–
Location: TN Highway 53
Landholding Agency: COE
Property Number: 31199011483
Status: Underutilized
Reason: Floodway

Tracts 1710, 1716 and 1703
Flynns Lick Launching Ramp
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38562–
Location: Whites Bend Road
Landholding Agency: COE
Property Number: 31199011484
Status: Underutilized
Reason: Floodway

Tract 1810
Wartrace Creek Launching Ramp
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38551–
Location: TN Highway 85
Landholding Agency: COE
Property Number: 31199011485
Status: Underutilized
Reason: Floodway

Tract 2524
Jennings Creek
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38562–
Location: TN Highway 85
Landholding Agency: COE
Property Number: 31199011486
Status: Unutilized
Reason: Floodway

Tracts 2905 and 2907
Webster
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38551–
Location: Big Bottom Road
Landholding Agency: COE
Property Number: 31199011487
Status: Unutilized
Reason: Floodway

Tracts 2200 and 2201
Gainesboro Airport
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38562–
Location: Big Bottom Road
Landholding Agency: COE
Property Number: 31199011488
Status: Underutilized
Reasons: Within airport runway clear zone Floodway

Tracts 710C and 712C
Sullivan Island
Cordell Hull Lake and Dam Project
Carthage Co: Smith TN 37030–
Location: Sullivan Bend Road
Landholding Agency: COE
Property Number: 31199011489
Status: Unutilized
Reason: Floodway

Tract 2403, Hensley Creek
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38562–
Location: TN Highway 85
Landholding Agency: COE
Property Number: 31199011490
Status: Unutilized
Reason: Floodway

Tracts 2117C, 2118 and 2120
Cordell Hull Lake and Dam Project
Trace Creek
Gainesboro Co: Jackson TN 38562–
Location: Brooks Ferry Road
Landholding Agency: COE
Property Number: 31199011491
Status: Unutilized
Reason: Floodway

Tracts 424, 425 and 426
Cordell Hull Lake and Dam Project
Stone Bridge
Carthage Co: Smith TN 37030–
Location: Sullivan Bend Road

Landholding Agency: COE
Property Number: 31199011492
Status: Unutilized
Reason: Floodway

Tract 517
J. Percy Priest Dam and Reservoir
Suggs Creek Embayment
Nashville Co: Davidson TN 37214–
Location: Interstate 40 to S. Mount Juliet Road.
Landholding Agency: COE
Property Number: 31199011493
Status: Underutilized
Reason: Floodway

Tract 1811
West Fork Launching Area
Smyrna Co: Rutherford TN 37167–
Location: Florence road near Enon Springs Road
Landholding Agency: COE
Property Number: 31199011494
Status: Underutilized
Reason: Floodway

Tract 1504
J. Perry Priest Dam and Reservoir
Lamon Hill Recreation Area
Smyrna Co: Rutherford TN 37167–
Location: Lamon Road
Landholding Agency: COE
Property Number: 31199011495
Status: Underutilized
Reason: Floodway

Tract 1500
J. Perry Priest Dam and Reservoir
Pools Knob Recreation
Smyrna Co: Rutherford TN 37167–
Location: Jones Mill Road
Landholding Agency: COE
Property Number: 31199011496
Status: Underutilized
Reason: Floodway

Tracts 245, 257, and 256
J. Perry Priest Dam and Reservoir
Cook Recreation Area
Nashville Co: Davidson TN 37214–
Location: 2.2 miles south of Interstate 40 near Saunders Ferry Pike.
Landholding Agency: COE
Property Number: 31199011497
Status: Underutilized
Reason: Floodway

Tracts 107, 109 and 110
Cordell Hull Lake and Dam Project
Two Prong
Carthage Co: Smith TN 37030–
Location: US Highway 85
Landholding Agency: COE
Property Number: 31199011498
Status: Unutilized
Reason: Floodway

Tracts 2919 and 2929
Cordell Hull Lake and Dam Project
Sugar Creek
Gainesboro Co: Jackson TN 38562–
Location: Sugar Creek Road
Landholding Agency: COE
Property Number: 31199011500
Status: Unutilized
Reason: Floodway

Tracts 1218 and 1204
Cordell Hull Lake and Dam Project
Granville—Alvin Yourk Road
Granville Co: Jackson TN 38564–
Landholding Agency: COE
Property Number: 31199011501
Status: Unutilized
Reason: Floodway

Tract 2100
Cordell Hull Lake and Dam Project
Galbreaths Branch
Gainesboro Co: Jackson TN 38562
Location: TN Highway 53
Landholding Agency: COE
Property Number: 31199011502
Status: Unutilized
Reason: Floodway

Tract 104 et. al.
Cordell Hull Lake and Dam Project
Horshoe Bend Launching Area
Carthage Co: Smith TN 37030–
Location: Highway 70 N
Landholding Agency: COE
Property Number: 31199011504
Status: Underutilized
Reason: Floodway

Tracts 510, 511, 513 and 514
J. Percy Priest Dam and Reservoir Project
Lebanon Co: Wilson TN 37087–
Location: Vivrett Creek Launching Area, Alvin Sperry Road
Landholding Agency: COE
Property Number: 31199120007
Status: Underutilized
Reason: Floodway

Tract A–142, Old Hickory Beach
Old Hickory Blvd.
Old Hickory Co: Davidson TN 37138–
Landholding Agency: COE
Property Number: 31199130008
Status: Underutilized
Reason: Floodway

Tract D, 7 acres
Cheatham Lock & Dam
Nashville Co: Davidson TN 37207–
Landholding Agency: COE
Property Number: 31200020006
Status: Underutilized
Reason: Floodway

Texas

Tracts 104, 105–1, 105–2 & 118
Joe Pool Lake
Co: Dallas TX
Landholding Agency: COE
Property Number: 31199010397
Status: Underutilized
Reason: Floodway

Part of Tract 201–3
Joe Pool Lake
Co: Dallas TX
Landholding Agency: COE
Property Number: 31199010398
Status: Underutilized
Reason: Floodway

Part of Tract 323
Joe Pool Lake
Co: Dallas TX
Landholding Agency: COE
Property Number: 31199010399
Status: Underutilized
Reason: Floodway

Tract 702–3
Granger Lake
Route 1, Box 172
Granger Co: Williamson TX 76530–9801
Landholding Agency: COE
Property Number: 31199010401
Status: Unutilized
Reason: Floodway

Tract 706
Granger Lake
Route 1, Box 172
Granger Co: Williamson TX 76530–9801
Landholding Agency: COE
Property Number: 31199010402
Status: Unutilized
Reason: Floodway

West Virginia

Morgantown Lock and Dam
Box 3 RD #2
Morgantown Co: Monongahelia WV 26505–
Landholding Agency: COE
Property Number: 31199011530
Status: Unutilized
Reason: Floodway

London Lock and Dam
Route 60 East
Rural Co: Kanawha WV 25126–
Location: 20 miles east of Charleston, W. Virginia.
Landholding Agency: COE
Property Number: 31199011690
Status: Unutilized
Reason: .03 acres; very narrow strip of land

Portion of Tract #101
Buckeye Creek
Sutton Co: Braxton WV 26601–
Landholding Agency: COE
Property Number: 31199810006
Status: Excess
Reason: inaccessible

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Federal Register

Friday,
August 10, 2001

Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Rule To Establish Sixteen Additional Manatee Protection Areas in Florida; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH80

Endangered and Threatened Wildlife and Plants; Proposed Rule To Establish Sixteen Additional Manatee Protection Areas in Florida

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; availability of supplemental information.

SUMMARY: We, the Fish and Wildlife Service (Service), propose to establish 16 additional manatee protection areas in Florida. We are proposing this action under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (ESA), and the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361–1407)(MMPA), to further recovery of the Florida manatee (*Trichechus manatus latirostris*) through a reduction in the level of take. In evaluating the need for additional manatee protection areas, we considered the needs of the manatee at an ecosystem level with the goal of ensuring that adequate, protected areas are available throughout peninsular Florida to satisfy the biological requirements of the species, with a view toward the manatee's recovery. We are proposing to designate four areas in Hillsborough, Pinellas, and Citrus Counties, as manatee sanctuaries in which all waterborne activities would be prohibited, with an exception for residents. The remaining 12 areas, located in Pinellas, Sarasota, Charlotte, Desoto, Lee, and Brevard Counties, would be designated as manatee refuges in which certain waterborne activities would be prohibited or regulated. We also announce the availability of a draft environmental assessment for this action.

DATES: We will consider comments on both the proposed rule and the draft environmental assessment that are received by October 9, 2001. We will hold a public hearing in Melbourne, Brevard County, on September 13, 2001, from 7:00 p.m. to 9:00 p.m., at the Radison Hotel and Conference Center, 3101 North Highway A1A, Melbourne. We will hold additional public hearings at dates, times, and sites to be determined. See additional information on the public hearing process in **SUPPLEMENTAL INFORMATION.**

ADDRESSES: If you wish to comment, you may submit your comments by any one of several methods:

1. You may submit written comments and information to the Field Supervisor, Jacksonville Field Office, U.S. Fish and Wildlife Service, 6620 Southpoint Drive, South, Suite 310, Jacksonville, Florida 32216.

2. You may hand-deliver written comments to our Jacksonville Field Office, at the above address, or fax your comments to 904/232–2404.

3. You may send comments by electronic mail (e-mail) to *fw4_es_jacksonville@fws.gov.* For directions on how to submit electronic comment files, see the ''Public Comments Solicited'' section.

We request that you identify whether you are commenting on the proposed rule or draft environmental assessment. Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours from 8 a.m. to 4:30 p.m., at the above address. You may obtain copies of the draft environmental assessment from the above address or by calling 904/232–2580, or from our website at *http://northflorida.fws.gov.*

FOR FURTHER INFORMATION CONTACT: David Hankla, Peter Benjamin, or Cameron Shaw (see **ADDRESSES** section), telephone 904/232–2580; or visit our website at *http://northflorida.fws.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Florida manatee is federally listed as an endangered species under the ESA (16 U.S.C. 1531 *et seq.*) (32 FR 4001) and is also federally protected under the MMPA (16 U.S.C. 1361–1407). It resides in freshwater, brackish, and marine habitats of coastal and inland waterways in the southeastern United States. The majority of this population resides in the waters of the State of Florida throughout the year, and nearly all manatees use the waters of peninsular Florida during the winter months. The manatee is a cold-intolerant species and requires warm waters (above 20 degrees Celsius (68 degrees Fahrenheit)) to survive during periods of cold weather. During the winter months many manatees rely on the warm water from natural springs and industrial outfalls for warmth. During the summer months they expand their range and are seen rarely as far north as Rhode Island on the Atlantic Coast and as far west as Texas on the Gulf Coast.

Recent information indicates that the overall manatee population has grown since the species was listed (U.S. Fish and Wildlife Service 2000a). However, in order for us to determine that an endangered species has recovered to a point that it warrants removal from the List of Endangered and Threatened Wildlife and Plants, the species must have improved in status to the point at which listing is no longer appropriate under the criteria set out in section 4(a)(1) of the ESA. That is, threats to the species that caused it to be listed must be reduced or eliminated such that the species no longer fits the definitions of threatened or endangered. While indications of increasing population size are very encouraging, there is no indication that important threats to the species, including human-related mortality and harassment, have been effectively reduced or eliminated.

Human activities, particularly waterborne activities, are resulting in the take of manatees. Take, as defined by the ESA, means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or to attempt to engage in any such conduct. Harm means an act which actually kills or injures wildlife (50 CFR 17.3). Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. Harass means an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns, which include, but are not limited to, breeding, feeding or sheltering (50 CFR 17.3).

The MMPA sets a general moratorium on the taking and importation of marine mammals. Section 101(a) of the MMPA makes it unlawful for any person to take, possess, transport, purchase, sell, export, or offer to purchase, sell, or export, any marine mammal or marine mammal product except as permitted for public display, scientific research, or enhancing the survival of the species. Take, as defined by section 3(13) of the MMPA means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal.

Harassment is defined under the MMPA as any act of pursuit, torment, or annoyance which—(i) has the potential to injure a marine mammal or marine mammal stock in the wild; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

Human use of the waters of the southeastern United States has increased dramatically as a function of residential growth and increased visitation. This phenomenon is particularly evident in the State of Florida. The population of Florida has grown by 124 percent since 1970 (6.8 to 15.2 million, U.S. Census Bureau) and is expected to exceed 18 million by 2010, and 20 million by the year 2020. According to a recent report by the Florida Office of Economic and Demographic Research (2000), it is expected that by the year 2010, 13.7 million people will reside in the 35 coastal counties of Florida. In a parallel fashion to residential growth, visitation to Florida has increased dramatically. It is expected that Florida will have 83 million visitors annually by the year 2020, up from 48.7 million visitors in 1998. In concert with this increase of human population growth and visitation is the increase in the number of watercraft which ply Florida waters. In 1999, there were 829,971 vessels registered in the State of Florida. This is an increase in registered vessels of almost 20 percent since 1993 (Florida Fish and Wildlife Conservation Commission 2000). During this same period, the number of watercraft-related manatee mortalities has increased by 144 percent, from 35 to 82 deaths per year. The Florida Department of Community Affairs estimates that, in addition to boats belonging to Florida residents, between 300,000 and 400,000 boats registered in other States use State waters each year.

The large increase in human use of waters inhabited by manatees has had direct and indirect impacts on this endangered species. Direct impacts include injuries and death from vessel impacts, deaths and injuries from water control structure operations, lethal and sub-lethal entanglements with commercial and recreational fishing gear, and alterations of behavior due to harassment. Indirect impacts include habitat destruction and alteration, decreases in water quality throughout some aquatic habitats, decreases in quantity of warm water at natural sites, marine debris, and general disturbance from human activities.

Approximately 75 percent of all watercraft-related manatee mortality has taken place in 11 Florida counties (Brevard, Lee, Collier, Duval, Volusia, Broward, Palm Beach, Charlotte, Hillsborough, Citrus, and Sarasota) (Florida Marine Research Institute Manatee Mortality Database 2000). Manatee mortality has continued to climb steadily. Average annual mortality in the 1990s (227.9) was nearly twice that of the 1980s (118.2), and this trend continued in 2000, when 273 dead manatees were recorded. Total mortalities over the past 4 years have averaged 45 percent higher than in the early 1990s. When the record high total of 1996 is added (the year in which the red tide die-off inflated total mortality to 416 animals), average annual mortality over the past 5 years has been nearly 60 percent greater than in the early 1990s (draft Marine Mammal Commission Annual Report to Congress 2000).

The continuing increase in the number of recovered dead manatees throughout Florida has been interpreted as evidence of increasing mortality rates (Ackerman *et al.* 1995). Between 1976 and 1999, the number of carcasses collected in Florida increased at a rate of 5.8 percent per year, and deaths caused by watercraft strikes increased by 7.2 percent per year (Service 2000a). Because the manatee has a low reproductive rate, a decrease in adult survivorship due to watercraft collisions could contribute to a long-term population decline (O'Shea *et al.* 1985). It is believed that a 1 percent change in adult survival likely results in a corresponding change in the rate of population growth or decline (Marmontel *et al.* 1997).

Collisions with watercraft are the largest source of human-related manatee deaths. Data collected during manatee carcass salvage operations in Florida indicate that a total of 979 manatees (from a total carcass count of 4,021) are confirmed victims of collisions with watercraft since 1976. This number may not accurately represent the actual number of watercraft-related mortalities since many of the mortalities listed as ''undetermined causes'' show evidence of collisions with vessels. Collisions with watercraft comprise approximately 24 percent of all manatee mortalities since 1976. The last 5 years have been record years for the number of watercraft-related mortalities, and watercraft-related deaths have become a larger proportion of total mortality. Since 1998, watercraft-related deaths have represented about 30 percent of all mortality, a 5 percent increase compared to the early 1990s. During the 1980s and 1990s the manatee population apparently grew; however, if population growth rate levels off and manatee mortality continues to increase, a decline in abundance is inevitable (draft Marine Mammal Commission Annual Report to Congress 2000).

The second largest cause of human-related manatee mortality is entrapment in water control structures and navigation locks (Florida Marine Research Institute Manatee Mortality Database 2000). Manatees may be crushed in gates and locks or may be trapped in openings where flows prevent them from surfacing to breathe. Locks and gates were responsible for 159 manatee deaths between 1976 and 1999 (Service 2000b). While there are no well-defined patterns characterizing these mortalities, it is believed that periods of low rainfall increase the likelihood of manatees being killed in these structures. These periods require more frequent, large-scale movements of water, which require more frequent gate openings and closings in areas that attract manatees searching for fresh water.

Manatees are also affected by other human-related activities. Impacts resulting from these activities include death caused by entrapment in pipes and culverts; entanglement in ropes, lines, and nets; ingestion of fishing gear or debris; vandalism; and poaching. These activities have accounted for 106 manatee deaths since 1976, an average of 4 deaths per year. As with watercraft-related mortalities, other human-related deaths also appear to be increasing, with 31 deaths, approximately 3 percent of the total mortalities, recorded between 1997 and 2000 attributed to these sources. This is an average of 7.75 deaths per year over the last 4 years attributable to other human-related activities.

Harassment of manatees is a concern, particularly when it impedes the use of warm water areas critical to manatee survival during periods of cold weather. In particular, there is an increasing number of swimmers and divers visiting Florida's waters to view and swim with the manatees. The presence of large numbers of people and the resultant disturbance has been documented to cause manatees to leave warm water areas (Jay Gorzaleny, Mote Marine Laboratory, personal communication). On occasion, divers and swimmers have been observed attempting to pet, chase, ride, and even sit on manatees. This type of harassment may cause the manatee to leave warmer water to find relief from the harassment in colder areas where there are fewer people. Such responses, if they are instigated by human harassment, are considered take under the ESA and MMPA.

In response to these problems and the watercraft-related impacts in particular, conservation agencies such as the Service and the Florida Fish and Wildlife Conservation Commission (FWC), have increased their emphasis on enforcement and compliance with manatee speed zones by adding new officers, conducting law enforcement task force initiatives, increasing

overtime, and increasing the proportion of law enforcement time devoted to manatee conservation. We are also evaluating development proposals which would increase watercraft traffic in manatee habitats where speed zones, signage, and enforcement are insufficient. To help address the negative effects of human actions on manatees, we are proposing to establish 4 additional manatee sanctuaries and 12 additional manatee refuges in Florida.

The authority to establish protection areas for the Florida manatee is provided by the ESA and the MMPA, and is codified in 50 CFR, part 17, subpart J. We may, by regulation, establish manatee protection areas whenever there is substantial evidence showing such establishment is necessary to prevent the taking of one or more manatees.

We may establish two types of manatee protection areas—manatee refuges and manatee sanctuaries. A manatee refuge, as defined in 50 CFR 17.102, is an area in which we have determined that certain waterborne activities would result in the taking of one or more manatees, or that certain waterborne activities must be restricted to prevent the taking of one or more manatees, including but not limited to a taking by harassment. A manatee sanctuary is an area in which we have determined that any waterborne activity would result in the taking of one or more manatees, including but not limited to a taking by harassment. A waterborne activity is defined as including, but not limited to, swimming, diving (including skin and SCUBA diving), snorkeling, water skiing, surfing, fishing, the use of water vehicles and dredging and filling activities.

In response to our advanced notice of proposed rulemaking for the development of this proposed rule and during several related public workshops, many commentors cited the increase in the overall size of the manatee population as evidence that the establishment of additional manatee protection areas is not needed. Recent data regarding the size of the manatee population are very encouraging, and indicate that local, State, and Federal efforts to recover the manatee are working. However, we remain concerned that waterborne activities are resulting in take of manatees, which is not allowed under the ESA and MMPA, and which may slow or even impede further recovery. It is our obligation under the ESA and MMPA to further manatee recovery, so that we may someday achieve our goal of removing the species from the List of Endangered and Threatened Wildlife and Plants. This includes using available tools, as practicable, to reduce the level of human-related manatee mortality. The establishment of manatee protection areas is one such tool. We are pursuing other complementary tools simultaneously, as described in the next two sections.

Synopsis of Manatee Lawsuit Settlement

In Save the Manatee Club v. *Ballard,* Civil No. 00–00076 EGS (D.D.C.), several organizations and individuals filed suit against the Fish and Wildlife Service and the U.S. Army Corps of Engineers (Corps) alleging violations of the Endangered Species Act (ESA), Marine Mammal Protection Act (MMPA), National Environmental Policy Act (NEPA), and Administrative Procedures Act (APA). Four groups representing development and boating interests intervened. Following extensive negotiations, a Settlement Agreement was approved by the court on January 5, 2001. Under the terms of the settlement, the Service agreed to the following:

• Submit a Proposed Rule for New Refuges and Sanctuaries to the **Federal Register** by April 2, 2001, and submit a final rule by September 28, 2001. Subsequent to the Federal settlement, the FWC also voted to settle *Save the Manatee* v. *Egbert,* Case No. 90–00–400CIV17–WS (N.D.Fla.) (the State case). That settlement, which has yet to be accepted by the court, calls for very similar protective measures in many of the locations proposed in this rule. As a result, the parties in the Federal lawsuit agreed to extend the April 2 deadline in an attempt to negotiate a means to avoid duplication of effort and better serve the public. Subsequent negotiations resulted in additional extensions, and the current deadline for submitting the proposal is August 3, 2001. The Service also agreed to evaluate the propriety of invocation of its emergency sanctuary/refuge designation authority. An Advance Notice of proposed rulemaking was published in the **Federal Register** on September 1, 2000, and a series of six (6) public workshops were held in December 2000. 1,752 comments were received in response to the Advance Notice, and 396 people attended the public workshops. The comments received are summarized in the Site Selection Process and Criteria section. The Service is currently coordinating its assessment with on-going State efforts to improve manatee speed zone regulations. Our coordination with the state of Florida is summarized in the next section. At least one public hearing will be conducted on the Service's proposed rule, and additional hearings will be conducted if requested by the public.

• Revise the Manatee Recovery Plan. The Service was required, by December 1, 2000, to make a draft revised Recovery Plan available for public review and comment, and to circulate its final revised Recovery Plan for signature no later than February 28, 2001. The Service published a draft revised Recovery Plan on November 30, 2000, and received over 500 comments. The Plaintiffs and Interveners agreed to new dates for development of a second draft and finalization of the Recovery Plan. As a result of the comments, the Service made substantial revisions to the Recovery Plan and subsequently issued a second draft for public review and comment on July 10, 2001. The Recovery Plan will be finalized by October 31, 2001.

• Pursue a rulemaking proceeding to adopt incidental take regulations under the MMPA. By March 6, 2001, the Service was required to submit to the **Federal Register** an Advance Notice of proposed rulemaking; invite by letter the Corps and other entities that conduct activities which may influence factors relating to effects of watercraft on manatees to participate in the MMPA rulemaking process; and promptly provide copies of the **Federal Register** notice and invitation letters to the Plaintiffs and Interveners. The Advanced Notice was published in the **Federal Register** on March 12, 2001, and copies of the Advanced Notice and invitation letters were mailed to the Plaintiffs and Interveners on March 6, 2001. The Service will determine if any anticipated take by entities participating in the rulemaking process meets the requirements set forth in section 101(a)(5) of the MMPA, 16 USC 1371(a)(5). The process should result in: (1) If the requirements set forth in section 101(a)(5) of the MMPA are deemed satisfied, a proposed and final MMPA incidental take regulation; (2) preparation of appropriate NEPA documentation which will include the direct, indirect, and cumulative effects of the overall MMPA regulation (either an Environmental Assessment (EA) or an Environmental Impact Statement (EIS)); (3) detailed assessments of agency programs, including cumulative effects on manatees and their habitat, for any activities covered under the regulation; and (4) consultation pursuant to section 7 of the ESA. The Service has determined that it will prepare an EIS in association with this action. Draft and final products are due

on November 5, 2002, and May 5, 2003, respectively. If the requirements of the MMPA cannot be met, the Service must notify the Plaintiffs and Interveners as soon as practicable, and publish a negative finding in the **Federal Register** with the bases for denying request. The Service must publish its negative finding by May 5, 2003. The Service will conduct public hearings on draft proposals as appropriate.

• By March 6, 2001, furnish Plaintiffs and Interveners with a letter describing how the Service will spend increased enforcement resources in FY–2001. This letter was sent on March 6, 2001.

• Revise and make available for public review, its ''interim guidance'' for addressing potential manatee impacts associated with development and permitting of new watercraft access facilities. The Service was required to submit this document by March 6, 2001. This document was timely submitted and appeared in the **Federal Register** on March 14, 2001. The Service agreed to provide at least thirty (30) days of public comment and actually provided sixty (60) days comment on the revised draft guidance. A final decision on the guidance will be submitted to the **Federal Register** by August 13, 2001.

• Provide written progress reports on the status of tasks agreed upon in the settlement agreement every 6 months. The first report was due and was provided to the parties on July 5, 2001.

• Provide copies of concurrence and non-concurrence letters to Plaintiffs and Interveners. Whenever the Service sends a letter to the Corps in response to the Corps' determination that a project ''may affect'' the manatee or ''may affect but is not likely to adversely affect'' the manatee, it is required to concurrently make a copy of the correspondence available to the Plaintiffs and Interveners. This obligation may be satisfied by establishing a web-based system or by transmitting a copy of the letter by U.S. mail or electronically. Until such time as the Service establishes a web-based system, it will forward copies by U.S. mail. These letters have been provided accordingly.

• Provide copies of Biological Opinions (BO). Whenever the Service issues a final BO regarding the effect of a particular project on manatees or manatee critical habitat, it is required to concurrently make a copy of that opinion available to Plaintiffs and Interveners. This obligation may be satisfied by establishing a web-based system or by transmitting a copy of the letter by U.S. mail or electronically. Until such time as the Service establishes a web-based system, it will forward copies by U.S. mail. These letters have been provided accordingly.

Coordination With State Actions

We acknowledge that there exists a network of manatee speed zones and sanctuaries, which have been established throughout peninsular Florida by Federal, State, and local governments. This existing structure works toward the above-stated goal of providing adequate protected areas throughout peninsular Florida to satisfy the biological requirements of the species. The purpose of our evaluation is to identify gaps in the existing network and to propose appropriate measures for filling those gaps.

We recognize that the existing system of speed zones and sanctuaries has been established primarily by State and local governments. We also recognize the important role of our State and local partners, and we continue to support and encourage State and local measures to improve manatee protection. We have focused the currently proposed action on those sites in which we have determined that Federal action can effectively address the needs in the particular area.

The sites contained in this proposed rule were selected based on the criteria described below, prior to the disclosure of terms of the proposed settlement in the State case. That proposed settlement contains a list of sites that the FWC will be evaluating for potential State designation of speed zones and sanctuaries. There is considerable overlap in terms of sites identified in that settlement and the sites discussed in this proposed rule. The fact that the State's list of sites is more expansive than this proposed rule does not indicate a determination on our part that sites on the State's list do not warrant designation, but is rather a reflection of our staffing and funding limitations in designating and maintaining a large number of Federal manatee protection areas.

We have been coordinating closely with the FWC since the terms of their proposed settlement were disclosed, to determine which sites are most appropriate for State designation and which are better suited for Federal designation. At the time our proposed rule was prepared, there was not a final agreement on the terms of the proposed State settlement. Pursuant to the terms of our settlement agreement described previously we were required to submit this proposed rule to the **Federal Register** by April 2, 2001, which was prior to the time in which the FWC made a final decision regarding sites they intend to evaluate. As stated previously, the deadline was extended on several occasions by agreement of the parties in an attempt to negotiate a means to avoid duplication of effort and better serve the public. Therefore, there is considerable possible overlap between this proposal and likely State action which could occur in the near future.

We strongly believe that the State should have leadership in establishing additional manatee protection areas. However, we also must meet our settlement obligations. Therefore, we intend to participate in the State's evaluation. If the State adopts identical or comparable manatee protection measures to the ones contained in this proposal, we will assess whether withdrawing these designations is appropriate. We will also continue to monitor sites that are not currently included in this proposed rule. If we identify additional needs, we will work with the State to establish necessary protection or may propose actions in the future, as appropriate. The converse is true if we find current protection areas are no longer necessary or prudent. Given that reducing watercraft-related manatee mortality is important to the recovery of the species, and given recent watercraft-related mortality in Brevard County, we intend to proceed expeditiously to final rulemaking for the Barge Canal and Sykes Creek sites once all public comments have been considered. The remaining 14 sites in this proposed rule are somewhat less urgent than the Barge Canal and Sykes Creek; however, we are concerned about the potential for lengthy delays in implementing what appear to be appropriate actions to reduce take at these sites. Therefore, we intend to defer final rulemaking on these sites until December 1, 2002. At that time, if we determine that designation is warranted for the remaining 14 sites, and should the State be unable to complete rulemaking on those sites, we intend to proceed with final rulemaking on those sites.

Site Selection Process and Criteria

In preparation for this proposed action, we met with representatives from local, State, and Federal agencies and organizations involved in manatee research, management, and law enforcement. These meetings helped us to develop a list of sites throughout Florida and southeast Georgia that manatee experts believed should be considered for possible designation as manatee protection areas.

As mentioned above, we published an advance notice of proposed rulemaking in the **Federal Register** on September 1,

2000 (65 FR 53222). The purpose of the advance notice was to inform the public that we were initiating the process of investigating areas for possible designation as manatee protection areas, and to solicit initial public input. We received 1,752 responses to the advance notice. Of these, 1,737 supported our efforts to establish additional manatee protection areas, and 13 opposed them. The remaining 2 comments did not state a specific opinion.

We also conducted six public workshops throughout peninsular Florida to present the list of potential sites and to solicit public input. A total of 396 people attended the workshops, and 166 provided either oral or written comments. Of these, 79 were general in nature, either supporting our efforts to establish additional manatee protection areas (40) or opposing them (39). An additional 36 comments were not specific to the topic or discussed other items. Fifteen commentors provided specific information or comments, including recommendations to increase enforcement, increase education, use new technology including satellite tracking of manatees, and other rule-related topics. Of the remaining comments, 28 specifically opposed and 8 specifically supported the establishment of additional manatee protection areas.

We selected sites for inclusion in the proposed rule from the list of sites developed through the preliminary meetings and the information gathered at the public workshops and in response to the advance notice. We based site selection on four factors—(1) evidence that the site is used by manatees; (2) historic evidence of take (harm or harassment) of manatees at the site due to waterborne human activities; (3) the potential for additional take based on manatee and human use of the site; and (4) a determination that we could implement effective measures at the site to address the identified problem.

In documenting manatee use and historic manatee harm and harassment, we relied on the best available data including aerial survey data and manatee mortality data, information from the Florida Marine Research Institute, Pathobiology Laboratory, and other information from State and Federal sources. These data were supplemented with information from manatee experts, the public, and our best professional judgment. In determining the potential effectiveness of our proposed actions, we considered the costs of managing and enforcing sites versus the benefits to manatee conservation. Costs associated with site management include installation and maintenance of appropriate signage, public education, and enforcement. In addition, designation of sanctuaries in the waters bordered by private property would entail additional administrative burdens in terms of identifying and providing access to affected residents. We considered these administrative burdens in selecting sites. Finally, we evaluated the effectiveness of our proposed actions against the likely effectiveness of actions by State and/or local governments. As stated previously, it was our goal to avoid sites that could be most effectively addressed by State or local government. However, the parallel suits against the State and Federal governments limited early coordination in the development of this proposal and the proposed State settlement. Therefore, duplication of effort may occur in the future. To resolve this, as appropriate we will consider withdrawing any actions where comparable State or local protection is established. We did, however, make every effort to make our proposed designations consistent with the existing adjacent State or local designations.

Definitions

'Idle speed' means the minimum speed needed to maintain watercraft steerage.

'Planing' means riding on or near the water's surface as a result of the hydrodynamic forces on a watercraft's hull, sponsons (projections from the side of a ship), foils, or other surfaces. A watercraft is considered on plane when it is being operated at or above the speed necessary to keep the vessel planing.

'Slow speed' means the speed at which a watercraft proceeds when it is fully off plane and completely settled in the water. Watercraft must not be operated at a speed that creates an excessive wake. Due to the different speeds at which watercraft of different sizes and configurations may travel while in compliance with this definition, no specific speed is assigned to slow speed. A watercraft is *not* proceeding at slow speed if it is—(1) on a plane, (2) in the process of coming up on or coming off of plane, or (3) creating an excessive wake. A watercraft *is* proceeding at slow speed if it is fully off plane and completely settled in the water, not plowing or creating an excessive wake.

'Slow speed (channel exempt)' designates a larger area where slow speed is required, through which a maintained, marked channel is exempt from the slow speed requirement.

'Slow speed (channel included)' means that the slow-speed designation applies to the entire marked area, including within the designated channel.

'Wake' means all changes in the vertical height of the water's surface caused by the passage of a watercraft, including a vessel's bow wave, stern wave, and propeller wash, or a combination of these.

We propose to amend the definition of water vehicle to include the terms watercraft and vessel. These terms are used interchangeably in the proposed rule and in 50 CFR subpart J. We also propose to add personal watercraft to this definition.

We propose to amend the ''Exception for residents'' to allow vessels other than boats access to private residences, boat houses, and boat docks through existing and proposed sanctuaries by the residents and their authorized guests.

Areas Proposed for Designation as Manatee Sanctuaries

Blue Waters

We propose to establish a seasonal manatee sanctuary, containing 1.7 hectares (ha) (4.1 acres) more or less, at the headwaters of the Homosassa River, adjacent to the Homosassa Springs State Wildlife Park, commonly referred to as the Blue Waters, in Citrus County. This sanctuary would prohibit engaging in all waterborne activities from October 1 through March 31, inclusive.

The headwaters of the Homosassa River are an important wintering site for manatees (Service Aerial Manatee Census Data, unpubl. report). The site is in close proximity to the Homosassa Spring, a Class 1 magnitude spring, which provides warm water from the Florida aquifer. This warm water is essential to the survival and well-being of a significant number of manatees during cold weather periods, with as many as 123 manatees being observed at the site at one time (Service Aerial Manatee Census Data, unpubl. report). Homosassa Springs State Wildlife Park, located directly upstream from the site and containing the spring itself, is not accessible to the manatees wintering at Blue Waters because the spring head is used as a care facility for captive manatees.

The presence of manatees, coupled with the shallow clear nature of the water, has attracted an increasingly large number of swimmers and divers to the site. The primary objective of these visitors is to interact in the water with the manatees. The waters of the Homosassa River are currently regulated

as an idle speed zone, and the State Park maintains a no-entry zone from a line approximately 61 meters (m) (200 feet (ft)) upstream of the confluence of the spring run and the northeast fork of the river. The number of visitors has grown to the point where manatees are observed leaving the site and swimming downstream to colder water (Jay Gorzaleny, Mote Marine Laboratory, personal communication). This adversely affects manatees by increasing the amount of energy required to maintain body temperature and could potentially cause physiologic harm to the animals, particularly smaller manatees, which are not able to maintain body temperatures as well as adult-sized animals (Worthy *et al.* 2000).

The establishment of a manatee sanctuary at this location would provide manatees with an undisturbed area in which to rest and sleep, by extending the no-entry zone currently maintained by the State Park approximately 61 m (200 ft) downstream in the spring run. The waters in the existing no-entry zone are, for the most part, too shallow to be accessible to manatees. The public would still have opportunities to interact with the manatees outside the proposed sanctuary, as manatees enter and exit the sanctuary. Interaction and viewing activities would probably increase as manatees would remain in the Blue Waters for more extended periods of time due to decreased disturbance. This has proven to be the case with the manatee sanctuaries in Kings Bay/Crystal River, Citrus County, Florida.

Bartow Electric Generating Station

We propose to establish a seasonal manatee sanctuary, containing approximately 73.5 ha (181.5 acres), at the warm water outflow of the Bartow Electric generating station in Tampa Bay, Pinellas County. This seasonal closure would prohibit all waterborne activity at this site from October 1 through March 31, inclusive. In addition, we propose to establish a manatee refuge in the South Gandy Channel north of the Bartow station (see ''Areas Proposed for Designation as Manatee Refuges'' section below).

A large percentage of the manatees residing in the middle Gulf of Mexico area of Florida winter at the warm water outflows of two operating electrical power plants in Tampa Bay (Florida Marine Research Institute Aerial Survey Data 2000). Minimizing disturbance of manatees at these warm water sites during winter months is critical to the survival of these manatees. We have proposed this area based on observed manatee use patterns in response to cold weather/cooler ambient water temperatures. Currently, manatees use the Bartow site for warmth during periods of cold weather. The maximum manatee count at this site was 102 manatees on February 25, 1999 (Florida Marine Research Institute Aerial Survey Data).

Warm water effluent from this plant attracts manatees during cold weather periods. Large numbers of fish are also attracted to this site, which, in turn, attracts large numbers of fishermen. The disturbance by boats causes manatees to move out of the area, thereby increasing metabolic rates and energy consumption of the animals as they attempt to maintain body temperatures (Worthy *et al.* 2000). There have also been cases of manatees being hooked by and entangled with fishing gear (Florida Marine Research Institute Manatee Mortality Database). Pinellas County has recently adopted a no-motor zone, in which only nonmotorized watercraft are permitted, in the immediate area of the outflow. While we applaud this initial action, we believe that the no-motor zone designation will not prevent harassment of manatees at this important warm water site. Establishing a sanctuary at this site would provide manatees with undisturbed access to this warm water outflow. We have selected the area proposed to be closed based on observed manatee use patterns during cold weather/cooler ambient water temperatures (Florida Marine Research Institute Aerial Survey Data).

Tampa Electric Company (TECO) Big Bend

We propose to establish a seasonal manatee sanctuary, containing 30.8 ha (76.2 acres) more or less, at the warm water outflow of the TECO Big Bend electric generating station in Tampa Bay, Hillsborough County. A seasonal closure would prohibit all waterborne activity at this site from October 1 through March 31, inclusive. In addition, we propose to establish a manatee refuge in the area south of this proposed sanctuary (see ''Areas Proposed for Designation as Manatee Refuges'' section below).

A large percentage of the manatees residing in the middle Gulf of Mexico area of Florida winter at the warm water outflows of two operating electrical power plants in Tampa Bay (Florida Marine Research Institute Aerial Survey Data). We proposed this area based on observed manatee use patterns in response to cold weather/cooler ambient water temperatures. Currently, manatees use the TECO site for warmth during periods of cold weather. Minimizing disturbance of manatees at these warm water sites during winter months is critical to the survival of these manatees. The highest manatee count at this site was 316 on January 6, 2001 (Florida Marine Research Institute Aerial Survey Data).

Warm water effluent from this plant attracts manatees during cold weather periods. Large numbers of fish are also attracted to this site, which, in turn, attracts large numbers of fishermen. The disturbance by boats causes manatees to move out of the area, thereby increasing metabolic rates and energy consumption of the animals in an attempt to maintain body temperatures (Worthy *et al.* 2000). Cases have been documented of manatees being hooked by and entangled with fishing gear (Florida Marine Research Institute Manatee Mortality Database). There is currently a seasonal no-entry zone in the immediate vicinity of the TECO outflow; however, this zone is too small to prevent harassment of manatees by fishermen. Establishing a sanctuary at this site would provide manatees with an expanded area during winter months. We have selected the area proposed to be closed based on observed manatee use patterns in response to cold weather/cooler ambient water temperatures (Florida Marine Research Institute Aerial Survey Data).

Port Sutton

We propose to establish a seasonal manatee sanctuary, containing 1.1 ha (2.7 acres) more or less, at the warm water outflow of the TECO Gannon electric generating station on Tampa Bay, Hillsborough County. A seasonal closure would prohibit all waterborne activity at this site from October 1 through March 31, inclusive. In addition, we propose to establish a manatee refuge in the Port Sutton area surrounding the proposed sanctuary (see ''Areas Proposed for Designation as Manatee Refuges'' section below).

A large percentage of the manatees residing in the middle Gulf of Mexico area of Florida winter at the warm water outflows of two operating electrical power plants in Tampa Bay. The Gannon plant is currently being retooled and is scheduled to go on-line in the near future. Once operating, the plant outflow is expected to attract wintering manatees. Therefore, limiting the disturbance of manatees using this site will be critical to the survival of manatees using this site during the winter. We have proposed this area based on observed manatee use patterns in response to cold weather/cooler ambient water temperatures.

Warm water effluent from this plant will attract manatees during cold weather periods. Large numbers of fish also will be attracted to this site, which, in turn, will attract large numbers of fishermen. The disturbance by boats causes manatees to move out of the area, thereby increasing metabolic rates and energy consumption of the animals in an attempt to maintain body temperatures (Worthy *et al.* 2000). Manatees have been hooked by and entangled with fishing gear. The area currently lacks a no-entry zone. Establishing a sanctuary at this site would provide manatees with undisturbed access to this warm water outflow. We have selected the area proposed to be closed based on observed manatee use patterns in response to cold weather/cooler ambient water temperatures (Florida Marine Research Institute Aerial Survey Data).

Areas Proposed for Designation as Manatee Refuges

South Gandy Navigation Channel

We propose to establish a seasonal manatee refuge, containing 30.3 ha (74.8 acres) more or less, in the South Gandy Channel north of the Bartow electric generating station, Pinellas County, with the purpose of regulating watercraft operation to slow speed from October 1 through March 31, inclusive.

We discuss the reasons for proposing this site in the description of the proposal to establish a manatee sanctuary at the Bartow electric generating station, adjacent to this site (see ''Areas Proposed for Designation as Manatee Sanctuaries'' section). Regulating this area as a slow-speed zone rather than as a sanctuary would afford ingress and egress through the area.

TECO Big Bend

We propose to establish a manatee refuge, containing 93.5 ha (231 acres) more or less, in the waters adjacent to, and south of, the proposed manatee sanctuary at the TECO Big Bend electric generating station in Hillsborough County to provide ingress and egress to the lagoon and canals in North Apollo Beach. Watercraft activity within this refuge would be regulated to idle speed from October 1 through March 31, inclusive.

We discuss the reasons for proposing this site in the description of the proposal to establish a manatee sanctuary at the TECO Big Bend electric generating station (see ''Areas Proposed for Designation as Manatee Sanctuaries'' section). Regulating this area as an idle-speed zone rather than as a sanctuary would afford ingress and egress through the area with a minimum anticipated adverse impact to manatees.

Port Sutton

We propose to designate the Port Sutton area surrounding the proposed manatee sanctuary at the TECO Gannon electric generating station, Hillsborough County, as a manatee refuge, containing 39.2 ha (96.9 acres) more or less. Watercraft would be required to proceed at idle speed within this refuge from October 1 through March 31, inclusive.

We discuss the reasons for proposing this site in the description of the proposal to establish a manatee sanctuary at the TECO Gannon electric generating station, adjacent to this site (see ''Areas Proposed for Designation as Manatee Sanctuaries'' section). Regulating this area as an idle-speed zone rather than as a sanctuary would afford ingress and egress through the area with a minimum anticipated adverse impact to manatees.

Pansy Bayou

We propose to establish a manatee refuge, containing 47 ha (116.1 acres) more or less, in the Pansy Bayou area in Sarasota County to regulate vessel traffic to slow speed all year.

Manatees consistently use this site as both a travel corridor and feeding site (Florida Marine Research Institute Aerial Survey Data). Pansy Bayou proper is currently closed under State law to all vessel traffic except residents, and serves as a manatee sanctuary. The site of the proposed refuge is currently used as a water-ski area, and the remaining waters around the proposed refuge are currently designated by the State as slow speed (channel included) zones (F.A.C. 62N–22.026(2)(a)(4)). Aerial survey data indicate significant manatee use in this area. There were 113 aerial surveys flown during all seasons between 1985 and 1993 in the area of Pansy Bayou. During each survey, manatees were detected in and around the high-speed water-ski area (within 1.2 kilometers (km) (0.75 mile (mi))), with the maximum number of 12 manatees observed during 1 survey. Two watercraft-related manatee mortalities have occurred within 1.6 km (1 mi) of the proposed manatee refuge. High-speed watercraft operation in this area poses a continuing threat to a substantial number of manatees. Establishment of a slow-speed zone would minimize the risk of manatee take due to watercraft collisions.

Little Sarasota Bay

We propose to establish a manatee refuge, containing 214.2 ha (529.4 acres) more or less, to control vessel speeds in the little Sarasota Bay area in Sarasota County. The speed designation for this area would be slow speed (channel exempt) all year.

This area is consistently used by manatees for feeding and as a travel corridor. Aerial survey data indicate a significant amount of use by manatees (Florida Marine Research Institute Aerial Survey Data). In the period between 1985 and 1993, there were 24 aerial surveys, conducted during all seasons of the year, in which manatees were detected in the proposed area. The maximum number of manatees observed during one survey was seven. Concurrently, the areas of Sarasota Bay within 1.6 km (1 mi) to the north and south of the proposed area were also flown. Manatees were also detected in these areas, with a maximum count of 12 manatees to the north of the site and 13 manatees to the south of the site. Four watercraft-related manatee mortalities have occurred in the vicinity of this site (Florida Marine Research Institute Manatee Mortality Database). There are currently no speed zones in this portion of Sarasota County. The current unregulated nature of vessel operation has high potential for resulting in manatee take. Establishing a slow-speed zone outside of the main navigation channel would reduce the potential for take by limiting vessel speeds in those waters where manatees are most likely to occur.

Lemon Bay

We propose to establish a manatee refuge, containing approximately 379.9 ha (938.8 acres), in Lemon Bay, Charlotte County, for the purpose of regulating vessel speed. Speed designation would be slow speed (channel exempt) all year.

Lemon Bay is used consistently by manatees for feeding and as a travel corridor. Aerial survey data indicate that this area is used extensively by manatees (Florida Marine Research Institute Aerial Survey Database). In the period between 1987 and 1998, there were 122 aerial surveys of the area, conducted during all seasons, during which manatees were observed. The highest number of manatees observed within the area of the proposed refuge during one survey was nine. There are currently no speed zones for manatee protection in this portion of Charlotte County. The unregulated nature of this water body makes the taking of manatees very likely, due to the high speed at which watercraft currently travel through areas frequented by manatees. Six watercraft-related manatee mortalities have occurred at

this site (Florida Marine Research Institute Manatee Mortality Database). Establishing a slow-speed zone outside of the main navigation channel would reduce the likelihood of manatee take occurring.

Peace River

We propose to establish a manatee refuge, containing 4,892 ha (12,088.1 acres) more or less, in the Peace River in Charlotte and Desoto Counties. This refuge would include the river and all associated waters northeast of the Tamiami Trail (U.S. Highway 41). Waters within the marked navigation channel would be regulated to allow watercraft to travel at a maximum speed of 40 km per hour (kph) (25 mi per hour (mph)). All waters outside of the marked channel would be regulated to provide for slow-speed vessel operation. These regulations would be in effect all year.

The Peace River is used throughout the year by manatees. There were 36 aerial surveys flown between 1987 and 1988, during which manatees were observed in the Peace River area. The maximum number of manatees observed during one flight was 16. A significant number of manatee mortalities have occurred at this site, including 11 watercraft-related mortalities. Of this number, six deaths have occurred since 1995. There are currently no speed zones for manatee protection in the Peace River. As a result, watercraft currently travel at high speeds through areas of the Peace River frequented by manatees. The establishment of the proposed refuge would slow vessel traffic in those portions of the Peace River where watercraft are most likely to encounter manatees, thereby minimizing the likelihood of take.

Shell Island

We propose to establish a manatee refuge, containing approximately 32.6 ha (80.5 acres), for the purpose of regulating vessel speed as slow speed (channel included) in the navigation channel that is located just north of Shell Island at the mouth of the Caloosahatchee River, Lee County. This regulation would be in effect all year.

The Caloosahatchee River system supports large numbers of manatees. The Florida Power and Light electrical generating station located on this river is a major wintering refuge for manatees. On January 6, 2001, 434 manatees were observed there (Florida Marine Research Institute Aerial Survey Database). Most manatees using the Caloosahatchee River must pass through the Intracoastal Waterway navigation channel north of Shell Island when entering or exiting the river. This funneling of watercraft traveling at high speed and manatees through a narrow channel has a high probability of resulting in take of manatees. Four watercraft-related manatee mortalities have occurred at this site, as well as in close proximity to this site. Establishing a slow-speed zone would minimize the likelihood of manatee take occurring at this site.

Haulover Canal

We propose to establish a manatee refuge, containing 408.1 ha (1,008.3 acres) more or less, at the Haulover Canal in Brevard County and extend the existing slow-speed zone eastward and westward from the ends of the canal. All waters lying within a radius of 0.8 km (0.5 mi) of each end of the Haulover Canal and including the canal itself would be designated as a slow speed (channel included) zone all year.

Manatees moving between the Mosquito Lagoon and the Indian River travel through the Haulover Canal. Aerial survey data indicate significant manatee use of the site. The canal functions in a funnel-like fashion, concentrating manatees and boats. While vessels are currently required to proceed at slow speed within the confines of the canal, there is no speed regulation to the east and west of the canal. Watercraft approaching an area where manatees are concentrated have a high probability of taking manatees. Five watercraft-related mortalities have occurred in the vicinity of the canal (Florida Marine Research Institute Manatee Mortality Database). Regulating boats to operate at slow speed not only within the canal, but also at the entrances to both ends of the canal in barbell fashion, would minimize the potential for take of manatees.

Barge Canal

We propose to establish a manatee refuge, containing approximately 276.3 ha (682.7 acres), for the purpose of regulating watercraft operation to slow speed (channel included) for the entire length of the Barge Canal and extending eastward to the Canaveral Locks, Brevard County. These regulations would be in effect all year.

The Barge Canal serves as a travel corridor between the Indian and Banana Rivers for manatees and mariners alike. Aerial survey data indicate significant use of the site by manatees. Currently there are four areas within the Barge Canal that are regulated by the State as 40-km-per-hour (25-mph) zones with a 7.6-m (25-ft) slow-speed shoreline buffer, all year, while the remainder of the Barge Canal is a slow-speed all-year zone. High-speed vessel operation in a confined migration corridor has an enhanced likelihood of resulting in take of manatees. There have been 16 watercraft-related manatee mortalities in the Barge Canal and its vicinity (Florida Marine Research Institute Manatee Mortality Database). Regulating vessels to operate at slow speed would minimize the potential for take of manatees.

The State recently approved new regulations for Brevard County that would also designate the Barge Canal as a slow speed zone; thereby providing the comparable level of manatee protection as our proposed designation. A number of organizations and individuals have appealed the State's rulemaking and it is uncertain at this time when, or whether, the State's designation may take effect. It is our view that reducing watercraft speeds in certain manatee habitat is essential to the recovery of the species. Therefore, we are proposing this designation at this time so that appropriate protective measures will be in place should the State be unable to implement their rulemaking. We considered promulgation of an emergency designation of the Barge Canal as a manatee refuge, and determined that such a designation may be warranted given the high level of watercraft related manatee mortality in this area. However, given the high level of public use of this waterway, and the anticipated high level of public interest/concern regarding this proposed action, we determined that proposed designation was the most prudent course of action. Nonetheless, it is our intention to proceed with final rulemaking on this site as expeditiously as possible following the careful consideration of all comments received in response to this notice.

Sykes Creek

We are proposing the establishment of a manatee refuge, containing 342.3 ha (845.8 acres) more or less, in Sykes Creek in Brevard County for the purposes of regulating watercraft operation to slow-speed (channel included) all year.

Aerial survey data indicate a significant amount of manatee use of Sykes Creek. Manatees consistently use this site for feeding, resting, and breeding. Like the Barge Canal, it is a fairly narrow water body and has been the site of 13 watercraft-related manatee mortalities (Florida Marine Research Institute Manatee Mortality Database). High-speed vessel operation in this area has a high likelihood of resulting in take of manatees. Regulating vessels to proceed at slow speed would minimize the likelihood of a take incident.

The State recently approved new regulations for Brevard County that would also designate the Sykes Creek as a slow speed zone; thereby providing the comparable level of manatee protection as our proposed designation. A number of organizations and individuals have appealed the State's rulemaking and it is uncertain at this time when, or whether, the State's designation may take effect. It is our view that reducing watercraft speeds in certain manatee habitat is essential to the recovery of the species. Therefore, we are proposing this designation at this time so that appropriate protective measures will be in place should the State be unable to implement their rulemaking. We considered promulgation of an emergency designation of Sykes Creek as a manatee refuge, and determined that such a designation may be warranted given the high level of watercraft related manatee mortality in this area. However, given the high level of public use of this waterway, and the anticipated high level of public interest/concern regarding this proposed action, we determined that proposed designation was the most prudent course of action. Nonetheless, it is our intention to proceed with final rulemaking on this site as expeditiously as possible following the careful consideration of all comments received in response to this notice.

Cocoa Beach

We propose to establish a manatee refuge, containing 23.9 ha (59.1 acres) more or less, to regulate vessel operation to slow speed all year in the area adjacent to Municipal Park at Cocoa Beach, Brevard County.

Aerial survey data indicate a significant amount of manatee use of this site. The area contains a substantial amount of sea grasses and is consistently used as a foraging area by manatees. A high incidence of watercraft-related manatee carcass recovery has occurred in the vicinity of this site, and one watercraft-related manatee mortality has occurred at this site. The site is currently a water-ski area regulated by the State as a 56-kph (35-mph) zone all year (F.A.C. 62N–22.006(1)(h)), whereas the surrounding waters are regulated as slow-speed zones all year (F.A.C. 62N–22.006(1)(d)). Given the use of the area by manatees, high-speed vessel operation at this location has a high probability of resulting in take of manatees. Requiring vessels to proceed at slow speed would minimize potential manatee take.

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

1. The reasons why any area should or should not be designated as a manatee sanctuary or a manatee refuge;

2. Current or planned activities in the subject areas and their possible effects on manatees;

3. Any foreseeable economic or other impacts resulting from the proposed designations; and

4. Potential adverse effects to the manatee associated with designating manatee protection areas for the species.

5. Any actions that could be considered in lieu of, or in conjunction with, the proposed designations that would provide comparable or improved manatee protection.

Please submit comments as an ASCII file format and avoid the use of special characters and encryption. Please also include ''Attn: [RIN number]'' and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Jacksonville Field Office (see **ADDRESSES** section).

Our practice is to make all 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 rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold also from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such a review is to ensure that our decisions are based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the comment period, on the specific assumptions and conclusions regarding the proposed designation of these manatee protection areas.

We will consider all comments and information received during the 60-day comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Public Hearings

The ESA provides for one or more public hearings on this proposal, if requested. Requests must be filed within 30 days of the date of this proposal. We have scheduled one public hearing for this proposal. We will hold additional public hearings at dates, times, and sites to be determined. Requests for additional hearings must be made in writing and should be addressed to the Field Supervisor, Jacksonville Field Office (see **ADDRESSES** section). We will publish a separate notice in the **Federal Register** providing information about the time and location for those hearings. Written comments submitted during the comment period receive equal consideration with those comments presented at a public hearing.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations/notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain unnecessary technical language or jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the proposed rule in the ''Supplementary Information'' section of the preamble helpful in understanding the proposed rule? (5) What else could we do to make the proposed rule easier to understand?

Send a copy of any comments that concern how we could make this proposed rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C

Street, NW., Washington, DC 20240. You may e-mail your comments to the following address: *Execsec@ios.doi.gov.*

Required Determinations

Regulatory Planning and Review

In accordance with the criteria in Executive Order 12866, this proposed rule is not a significant regulatory action. The Office of Management and Budget makes the final determination under Executive Order 12866.

a. This proposed rule will not have an annual economic impact of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit analysis is not required. We do not expect that any significant economic impacts would result from the establishment of 4 manatee sanctuaries (264.538 acres) and 12 manatee refuges (16,751.604 acres) in 7 Counties in the State of Florida. The public support for manatee protection is substantial in Florida. Using a contribution continuum method and reinforced by other empirical techniques, a study by Bendle and Bell in 1993 estimated that Floridians placed an asset value of $3.2 billion (2001 dollars) on the protection of the manatee population. This amounts to a per-household value of $18.12. The $3.2 billion is an estimate of the benefit derived by Floridians from the existence of the manatee population.

The purpose of this proposed rule is to establish 16 additional manatee protection areas in Florida. We are proposing to reduce the level of take of manatees by controlling human activity in 4 areas proposed as sanctuaries and 12 areas proposed as refuges. Affected waterborne activities include swimming, diving, snorkeling, water skiing, surfing, fishing, the use of water vehicles, and dredging and filling activities. For the four areas designated as sanctuaries all waterborne activities would be prohibited from October 1 to March 31. For the 12 areas designated as refuges the areas would be slow-speed zones. The economic effect of these designations will be measured by the number of recreationists who use alternative sites for their activity or have a reduced quality of the waterborne activity experience at the designated sites. The State of Florida has 12,000 miles of rivers and 3 million acres of lakes so the designation of 17,000 acres (roughly 25 linear miles), most of which is for lower speed zones, is unlikely to prevent any waterborne activity because of this rule, although some individuals may need to modify slightly when and where they pursue certain waterborne activities. Only one water craft company is known to use one of the proposed sites as a testing area for new hull designs. Alternative sites without speed zones are available nearby which would cost the manufacturer additional travel time and equipment re-calibration for the testing. No cost estimate for this adjustment is available at this time.

For boating recreationists, the inconvenience and extra time required to cross a slow-speed zone will reduce the quality of the waterborne activity for some participants. The extra time required for commercial charter boats to reach fishing grounds will reduce on-site fishing time and could result in lower consumer surplus for the trip. The number of recreationists and charter boats using the designated sites is not known. The State of Florida has nearly 800 thousand registered boats, but only those boats and recreationists using the designated sites will potentially be affected. However, since Florida has 12 thousand miles of rivers and streams and 3 million acres of lakes and ponds, it is likely that only a small percentage of boat users will be affected by this rule. The current designation of roughly 25 linear miles will cause some inconvenience in travel time over these areas, but alternative sites within the proximity of the manatee sanctuaries and refuges are available for all waterborne activities. Furthermore, none of the areas designated is the entire surface area of a water body. The undesignated parts of the water bodies are available for waterborne activities. Recreationists may be inconvenienced by having to travel to an undesignated area, but they are not prohibited from participating in any of the waterborne activities. Currently, no data sources estimate the amount of recreational activity in and around the 16 areas to be designated as either manatee sanctuaries or refuges. However, the majority (16,751.604 acres) of the areas proposed to be designated are for manatee refuges, which require only reduced speed. The 264.538 acres proposed as manatee sanctuaries are, for the most part, next to electric power generating plants and are part of larger water bodies where unrestricted waterborne recreational activity can take place. For these reasons, we believe some inconvenience to the public may occur because of reduced travel speeds but that the economic impact will not be significant.

b. This proposed rule is consistent with the approach used by State and local governments to protect manatees in Florida. We recognize the important role of State and local partners, and we continue to support and encourage State and local measures to improve manatee protection. The Service has focused the currently proposed action on those sites in which we have determined that Federal action can effectively address the needs in the particular area. However, as previously described, there is unavoidable potential for duplication and overlap. Therefore, we are eager to work with State and local agencies to develop and implement measures in the areas described in the proposed rule that would be equally protective of manatees. We also welcome their comments and participation between now and the time this rule is finalized to increase the likelihood of consistency of our final action with possible future action by the State or local agencies. If comparable protections are put in place before we make this rule final, we will consider excluding those areas from Federal protection.

c. This proposed rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Minimal restrictions to existing human uses of the proposed sites would result from this rule, but the restriction is believed to enhance manatee viewing opportunities. No entitlements, grants, user fees, loan programs or the rights and obligations of their recipients are expected to occur.

d. This proposed rule will not raise novel legal or policy issues. We have previously established other manatee sanctuaries. This proposed action will reduce the need for enforcement actions to prevent the takings of manatees by harassment resulting form human-related waterborne activities.

Regulatory Flexibility Act

I certify that this proposed rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). An initial/final Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

To determine the potential effects of this proposed rule on small entities, we looked at economic data from the seven counties in Florida that would be affected. Table 1, below, depicts general economic characteristics of those counties, and table 2 gives employment data. As can be seen in table 1, the growth rate in per capita income is slower than the State average in Citrus, Brevard, and Charlotte Counties, but the rate of growth in total personal income exceeds the State average except in Brevard County, where it is slightly lower. Larger households account for the lower per capita income estimates in these counties. The proportion of total

industry earnings coming from the amusements and recreation sector ranges from 0.5 percent in Brevard County to 2.7 percent in Sarasota County. All of these counties had the service sector as the largest economic contributor followed by retail trade and the real estate sectors. Overall, the affected counties had only a small proportion of earnings coming from the amusement and recreation sector. As a result, a small impact to the recreation sector would not result in a significant effect on county-level income.

TABLE 1.—ECONOMIC CHARACTERISTICS OF THE SEVEN AFFECTED COUNTIES IN FLORIDA—1997

Selected Florida counties	Employment	Per capita personal income (dollars)	10 year rate of growth (percent)	Personal income ($000)	10 year rate of growth (percent)	Total industry earnings ($000)	Services industry earnings for amusements and recreation ($000)	Percent of total
Establishing Sanctuaries:								
Citrus	35,663	$18,493	3.9	$2,060,167	6.9	$793,347	$6,650	0.8
Hillsborough	644,694	$23,719	5.2	$21,558,783	6.6	$18,847,236	$267,676	1.4
Pinellas	506,946	$28,367	4.9	$24,770,929	5.5	$13,876,518	$114,826	0.8
Establishing Refuges:								
Brevard	223,815	$22,205	3.7	$10,342,080	6.3	$6,255,354	$34,237	0.5
Charlotte	47,091	$21,861	3.7	$2,894,781	7.6	$995,159	$10,336	1.0
Lee	196,448	$25,568	4.4	$9,862,900	7.3	$4,848,936	$61,103	1.3
Sarasota	169,984	$35,654	5.2	$10,706,931	6.8	$4,239,034	$114,742	2.7
State of Florida	8,032,538	$24,799	4.5	$363,979,647	6.6	$220,985,959	$4,255,304	1.9

Source: http://govinfo.library.orst.edu/cgi-bin/reis-list

TABLE 2.—EMPLOYMENT CHARACTERISTICS OF THE SEVEN AFFECTED COUNTIES IN FLORIDA—1997 (INCLUDES SIC CODES 09, 44, 59, 79, SERVICES, AND NEC) [1]

Selected Florida counties	Mid-March employment	Total establishments	Number of establishments (1–4 employees)	Number of establishments (5–9 employees)	Number of establishments (10–19 employees)	Number of establishments (20 and over employees)
Establishing Sanctuaries:						
Citrus	8,926	1,044	655	214	95	80
Hillsborough	232,128	12,363	7,316	2,261	1,308	1,478
Pinellas	197,842	12,852	7,954	2,344	1,226	1,328
Establishing Refuges:						
Brevard	65,049	5,292	3,145	1,075	581	491
Charlotte	13,759	1,281	807	244	120	110
Lee	63,411	4,977	3,061	930	494	492
Sarasota	73,819	5,125	3,231	936	473	485

Source: http://fisher.lib.virginia.edu/cgi-local/cbpbin/go.cgi
[1] sic 09—Fishing, hunting, and trapping
sic 44—water transportation
sic 59—miscellaneous retail
services division
sic 79—amusement and recreation services
nonclassifiable establishments division

Table 2 provides employment data using Standard Industrial Classification (SIC) codes. The latest available published data for the total number of establishments in the SIC codes for fishing, hunting, trapping (SIC code 9), water transportation (SIC code 44), miscellaneous retail and services (SIC code 59), amusement and recreation services (SIC code 79), and nonclassifiable establishments is 1997. These are the establishments most likely to be directly associated with recreationists pursuing waterborne activities where manatees may be involved. As can be seen on Table 2, of the total number of establishments in these SIC codes, a large proportion employ fewer than 9 employees with the largest number of establishments employing fewer than 4 employees. If any economic impacts are associated with this rule, they will affect some proportion of these small entities. Since the bulk of the acreage proposed (16,751.604 acres) by this rule is for manatee refuges, which would only require a reduction in speed, we do not believe the minor inconvenience caused by going slower in designated areas will cause more than an insignificant economic effect. The inconvenience may cause some recreationists to go to alternative sites, which may cause some loss of income to some small businesses. However, the inconvenience is small so we believe that this will not be a significant economic dislocation. For the four areas designated as sanctuaries (264.538 acres), the restriction on human activity from October 1 to March 31 may cause some recreationists to go to alternative sites. However, three of the areas designated are in front of power plants, and the fourth (Blue

Waters) is only 4.145 acres. The designated areas are relatively small and part of large water bodies having large areas with no restrictions on human activity. Recreationists can pursue waterborne activities in close proximity to the manatee sanctuaries without entering the sanctuaries. For this reason, we believe that there will be an insignificant economic effect from the designation of the four areas as manatee sanctuaries. Without a significant change in recreationists' use patterns, there should be an equally insignificant change in business activity.

The only known direct effect will be on a business using one of the areas to test hull designs. The economic cost of relocating the test site, which requires boats going at high speed, is not known. Substitute sites are available within a reasonable distance, but the quality of the substitutes for the required testing is not known. Information obtained during the public comment period on the proposed rule may allow further analysis of this and any other effects identified.

Small Business Regulatory Enforcement Fairness Act

This proposed rule is not a major rule under 5 U.S.C. 804(2). This proposed rule:

a. Does not have an annual effect on the economy of $100 million or more. As shown above, this proposed rule may cause some inconvenience to recreationists because of the speed restriction on manatee refuge areas, but this should not translate into any significant business reductions for the many small businesses in the seven affected counties. An unknown portion of the establishments shown on Table 2 could be affected by this rule. Because the restrictions on recreational activity are believed to be no more than an inconvenience for recreationists, we believe that any economic effect on small entities resulting from changes in recreational use patterns will be insignificant also.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It is unlikely that there are unforeseen changes in costs or prices for consumers stemming from this proposed rule. The charter boat industry may be affected with lower speed limits for some areas when traveling to and from fishing grounds. Based on an analysis of public comment, further refinement of the impact on this industry may be possible. We believe that it is unlikely that reduced speed limits will result in a significant economic effect.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. As stated above, this proposed rule may generate some level of inconvenience to recreationists because of speed limits, but it is believed to be minor and will not interfere with the normal operation of businesses in the affected counties. The added travel time to traverse some areas is not expected to be a major factor that will impact business activity.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

a. This rule will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. The designation of manatee refuges and sanctuaries imposes no new obligations on State or local governments.

b. This rule will not produce a Federal mandate of $100 million or greater in any year, i.e., it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Takings

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required. The proposed manatee protection areas are located over State-owned submerged bottoms. Any property owners in the vicinity will have navigational access to their property.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. This rule will not have substantial direct effects on the State, in the relationship between the Federal Government and the State, or on the distribution of power and responsibilities among the various levels of government. As discussed earlier, we coordinated with the State of Florida to the extent possible on the development of this proposed rule.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This regulation does not contain collections of information that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* The proposed regulation will not impose new record keeping or reporting requirements on State or local governments, individuals, businesses, or organizations.

National Environmental Policy Act

We have analyzed this rule in accordance with the criteria of the National Environmental Policy Act. This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A draft environmental assessment has been prepared and is available for review upon request by writing to the Field Supervisor (see **ADDRESSES** section).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), E.O. 13175 and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects.

References Cited

A complete list of all references cited in this proposed rule is available upon request from the Jacksonville Field Office (see **ADDRESSES** section).

Author

The primary author of this document is Cameron Shaw (see **ADDRESSES** section).

Authority

The authority to establish manatee protection areas is provided by the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), as amended.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.102, remove the definition for ''water vehicle'' and add definitions, in alphabetical order, as follows:

§ 17.102 Definitions.

* * * * *

Idle speed is defined as the minimum speed needed to maintain steerage (direction) of the vessel.

* * * * *

Planing means riding on or near the water's surface as a result of the hydrodynamic forces on a water vehicle's hull, sponsons, foils, or other surfaces. A water vehicle is considered on plane when it is being operated at or above the speed necessary to keep the vessel planing.

Slow speed is defined as the speed at which a water vehicle proceeds when it is fully off plane and completely settled in the water. Due to the different speeds at which water vehicles of different sizes and configurations may travel while in compliance with this definition, no specific speed is assigned to slow speed. A water vehicle is *not* proceeding at slow speed if it is: on a plane; in the process of coming up on or coming off of plane; or creating an excessive wake. A water vehicle *is* proceeding at slow speed if it is fully off plane and completely settled in the water, not plowing or creating an excessive wake.

Slow speed (channel exempt) means that the slow-speed designation does not apply to those waters within the maintained, marked channel.

Slow speed (channel included) means that the slow-speed designation applies both within and outside the designated channel.

Wake means all changes in the vertical height of the water's surface caused by the passage of a water vehicle, including a vessel's bow wave, stern wave, and propeller wash, or a combination thereof.

* * * * *

Water vehicle, watercraft, and *vessel* include, but are not limited to, boats (whether powered by engine, wind, or other means), ships (whether powered by engine, wind, or other means), barges, surfboards, personal watercraft, water skis, or any other device or mechanism the primary or an incidental purpose of which is locomotion on, or across, or underneath the surface of the water.

3. Amend § 17.108 as follows:

a. Revise the introductory text of paragraph (a);

b. Remove the Kings Bay map from the end of the section and add a new map following paragraph (a)(7);

c. Add paragraphs (a)(8) to (11);

d. Revise the text of paragraph (b);

e. Remove the note following paragraph (b); and

f. Add paragraph (c).

§ 17.108 List of designated manatee protection areas.

(a) *Manatee sanctuaries.* The following areas are designated as manatee sanctuaries. For areas in paragraphs (a)(1) to (a)(7) of this section, all waterborne activities are prohibited during the period November 15 to March 31 of each year. For areas in paragraphs (a)(8) to (a)(11) of this section, all waterborne activities are prohibited during the period October 1 to March 31 of each year. The areas that will be posted as manatee sanctuaries are described as follows:

* * * * *

(7) * * *

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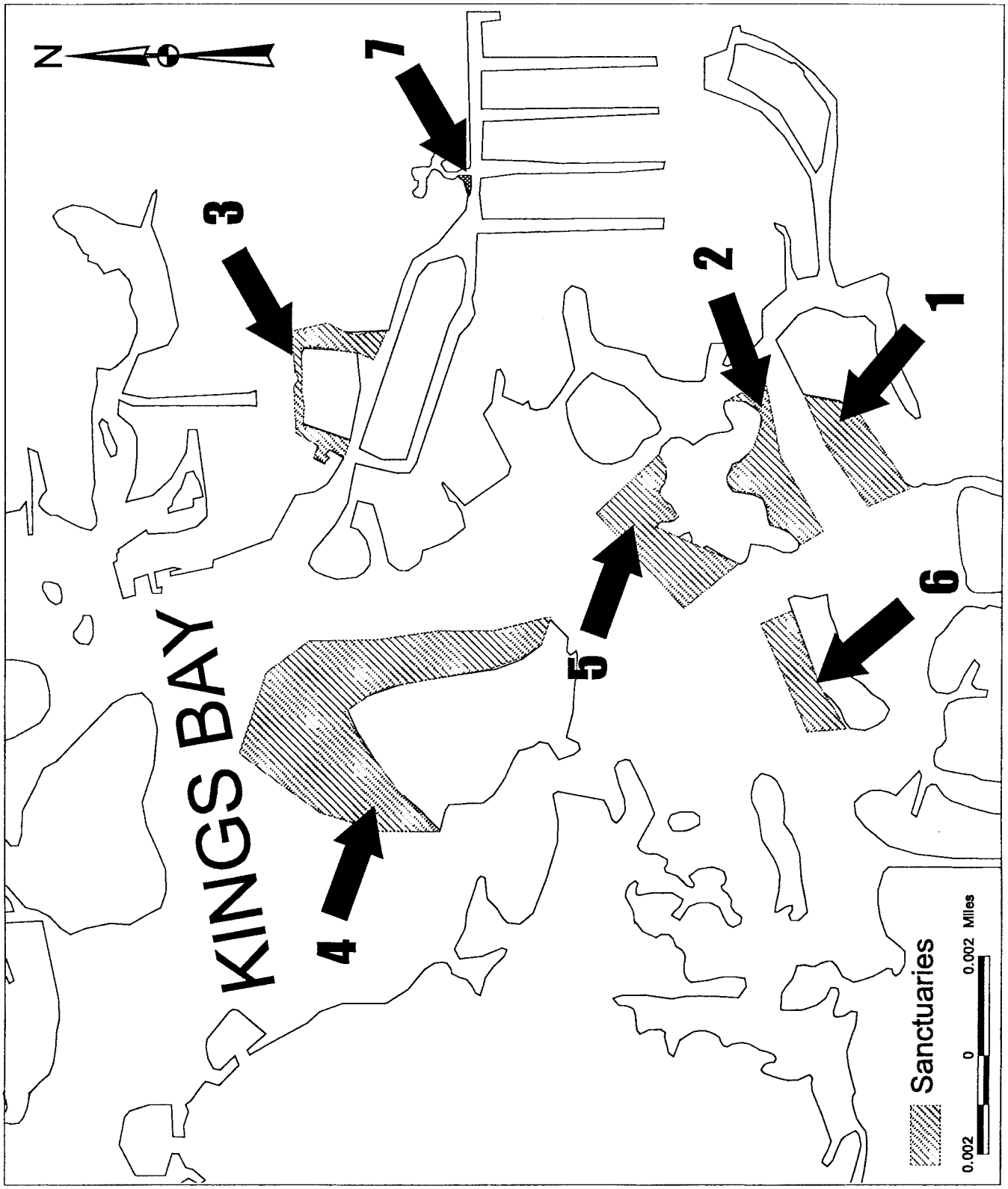
N
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KINGS BAY
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(8) A tract of submerged land, lying in Section 28, Township 19 South, Range 17 East, in Citrus County, more particularly described as the headwaters of the Homosassa River (adjacent to the Homosassa Springs State Wildlife Park), including the main spring and spring run to the point where the run enters the northeast fork of the river along the southeastern shore; to be known as the Blue Waters Manatee Sanctuary (Figure 1), containing approximately 1.7 hectares (ha) (4.1 acres).

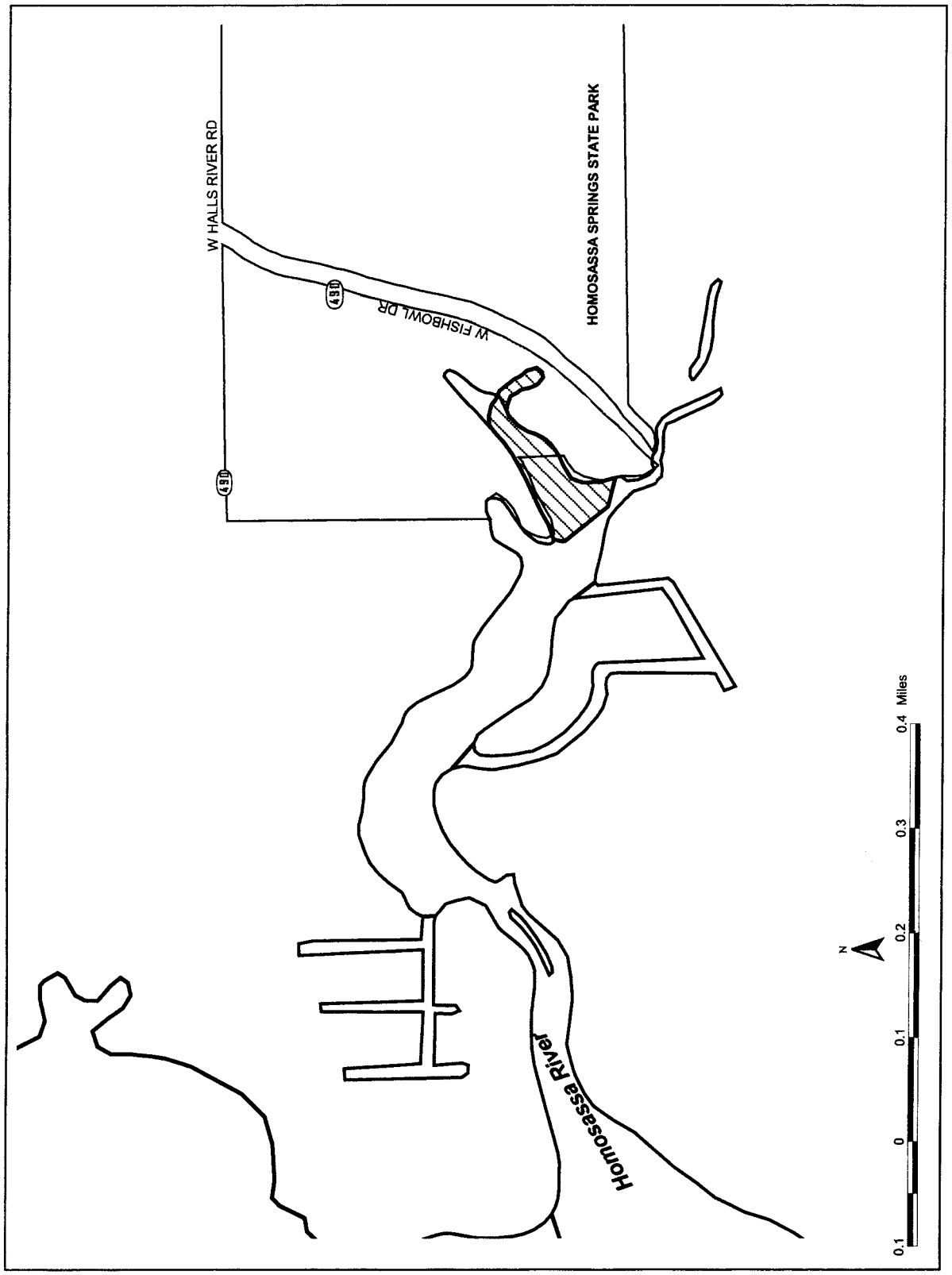

Figure 1. Proposed Blue Waters Manatee Sanctuary

(9) A tract of submerged land, lying in Sections 16 and 21, Township 30 South, Range 17 East, in Pinellas County, Florida, more particularly described as the warm-water outflow of the Bartow electric generating station located on the northern shore of Weedon Island, lying along a north-south axis line from the shoreline to, but not including, the South Gandy Channel on the western shore of Old Tampa Bay; to be known as the Bartow Electric Generating Station Manatee Sanctuary (Figure 2), containing approximately 73.5 ha (181.5 acres).

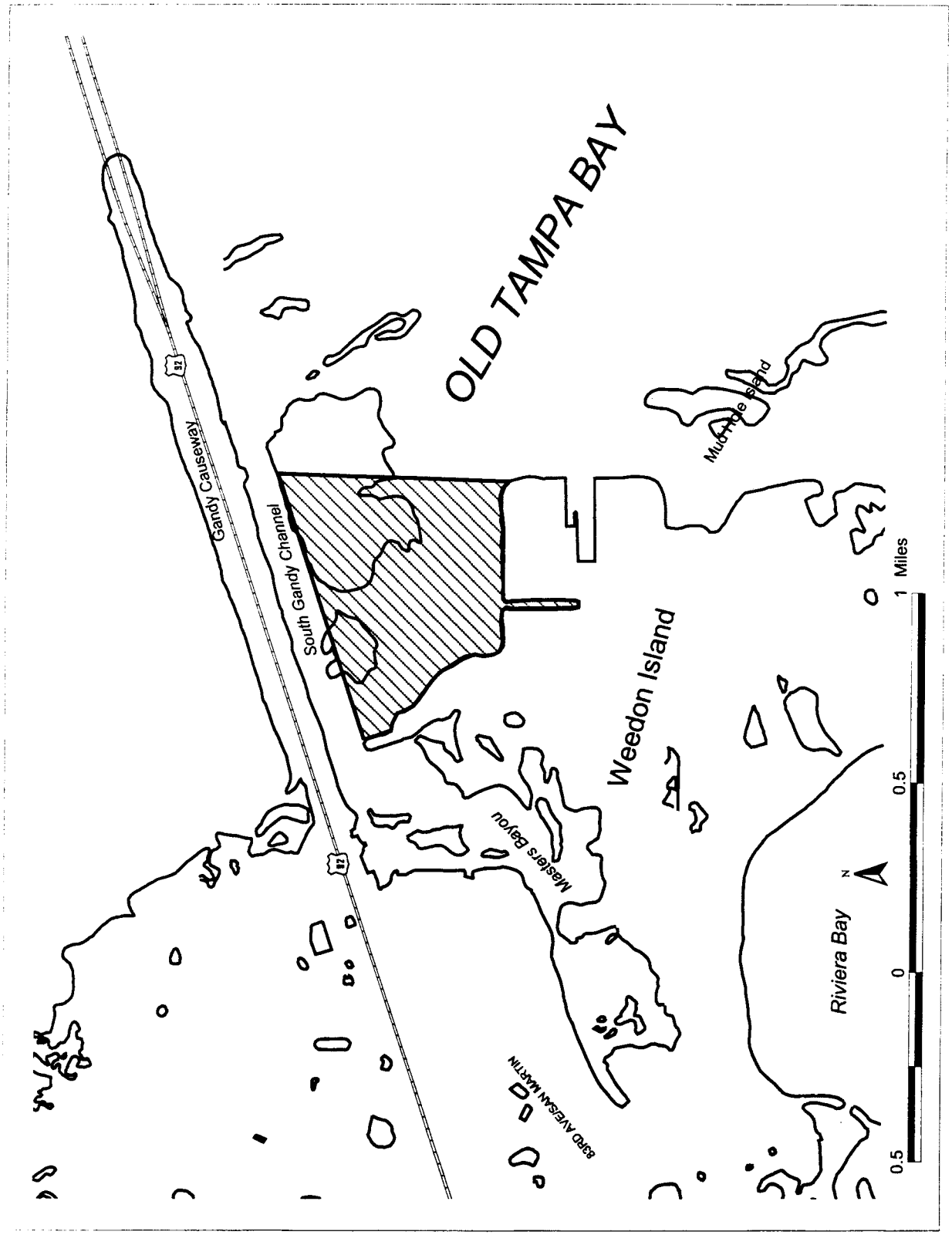

Figure 2. Proposed Bartow Electric Generating Plant Manatee Sanctuary

(10) A tract of submerged land, lying west of Sections 10 and 15, in Township 31 South, Range 19 East, in Hillsborough County, Florida, more particularly described as the waters in and around the warm-water outflow of the TECO Big Bend electric generating station located west of Jackson Branch and including the Big Bend area of eastern Tampa Bay; to be known as the TECO Big Bend Manatee Sanctuary (Figure 3), containing approximately 30.8 ha (76.2 acres).

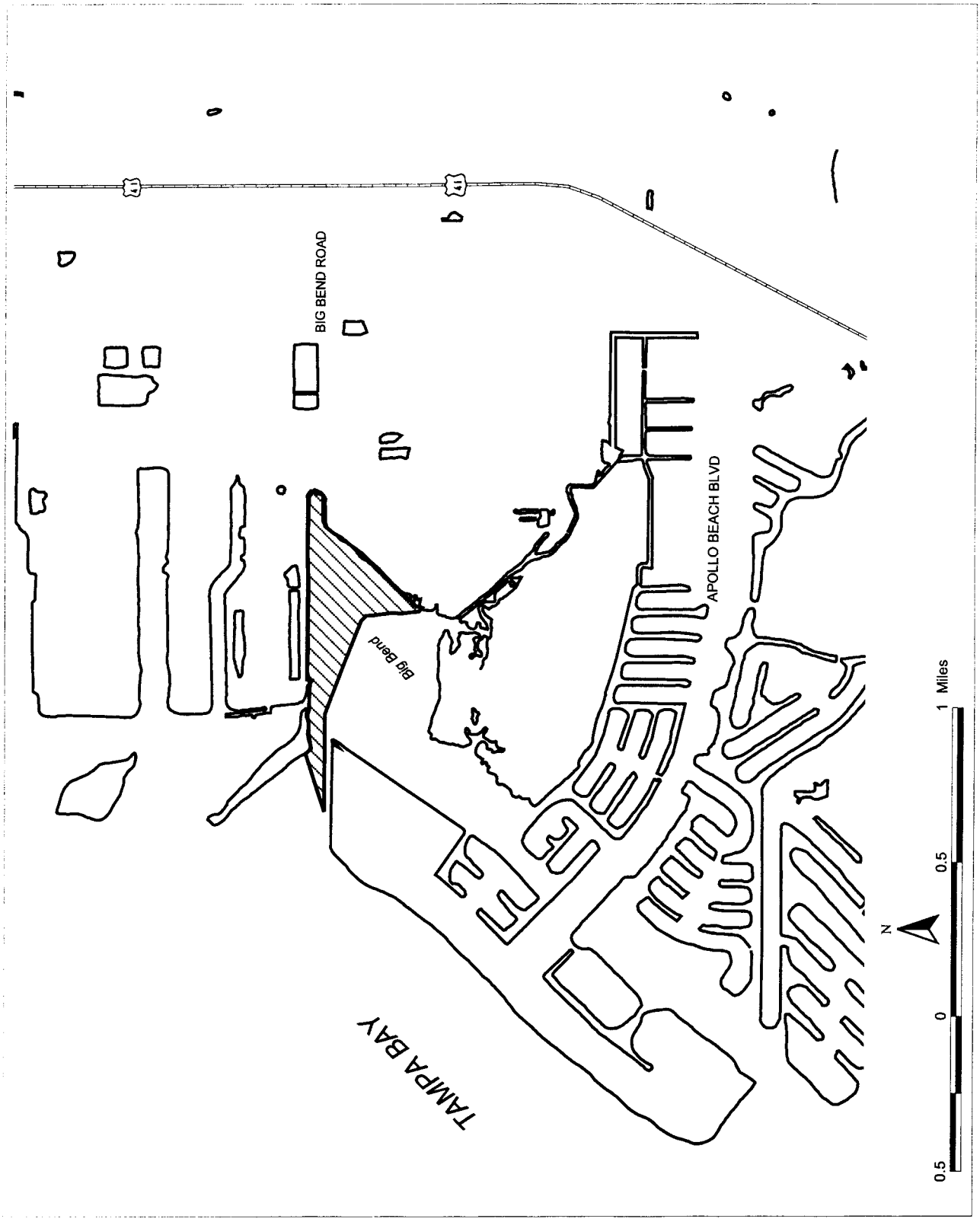

Figure 3. Proposed TECO Big Bend Manatee Sanctuary

(11) A tract of submerged land, lying in Section 4, Township 30 South, Range 19 East in Hillsborough County, Florida, more particularly described as the warm-water outflow of the TECO Gannon electric generating station; to be known as the Port Sutton Manatee Sanctuary (Figure 4), containing approximately 1.1 ha (2.7 acres).

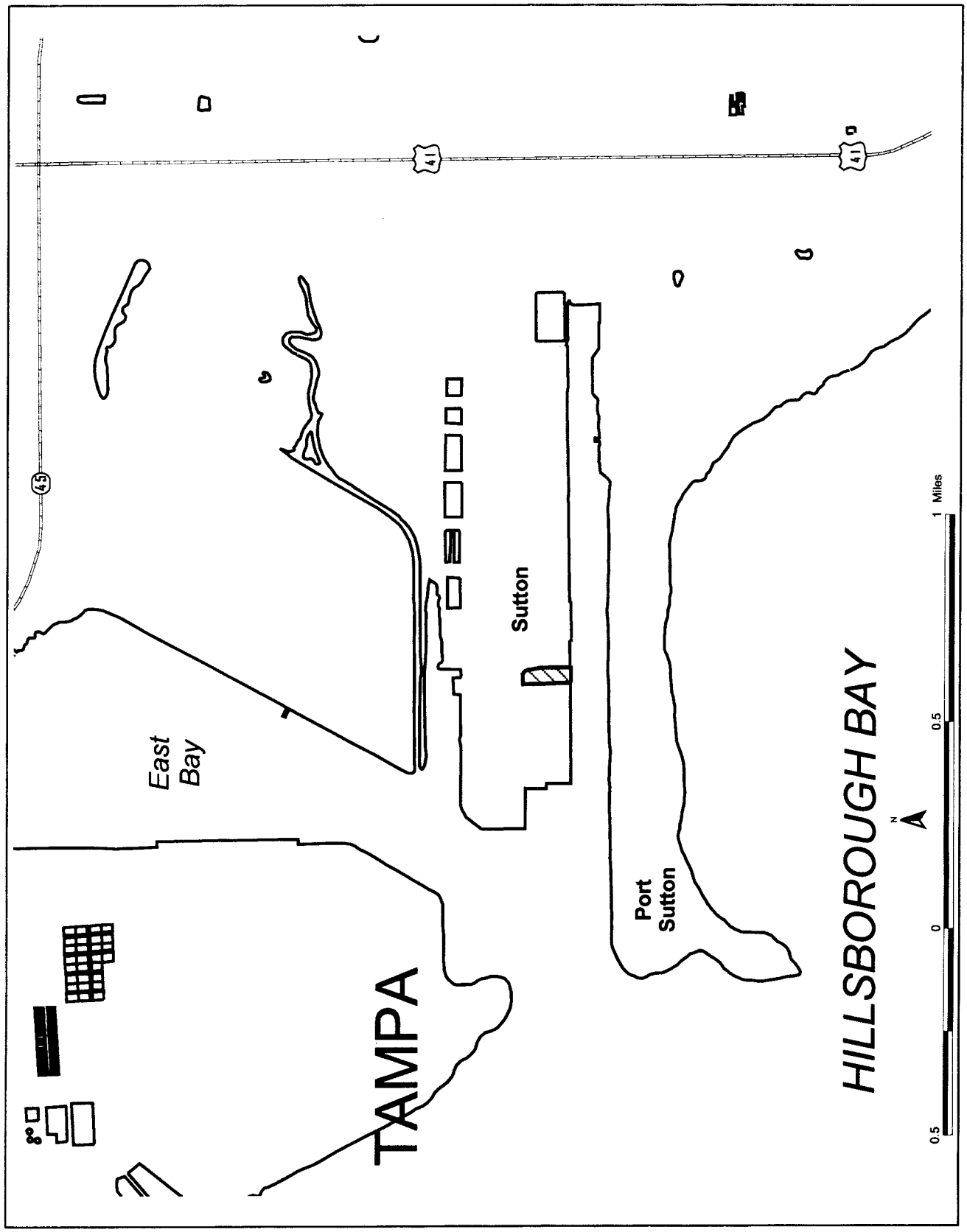

Figure 4. Proposed Port Sutton Manatee Sanctuary

(b) *Exception for residents.* Watercraft access to private residences, boat houses, and boat docks through these sanctuaries by the residents and their authorized guests is permitted. Any such authorized boating activity must be conducted by operating watercraft at idle speed/no wake. Residents' watercraft will be identified by the placement of a sticker provided by the Fish and Wildlife Service in a conspicuous location on each vessel. Use of the waters within the sanctuaries by watercraft will be only for the purpose of access to residences and the storage of such watercraft in waters adjacent to residences.

(c) *Manatee refuges.* The following areas are designated as manatee refuges. For each manatee refuge, we will state which, if any, waterborne activities are prohibited, and state the applicable restrictions, if any, on permitted waterborne activities. The areas that will be posted are described as follows:

(1)(i) The South Gandy Navigation Channel Manatee Refuge (Figure 5) is described as that portion of the South Gandy Navigation Channel in Pinellas County between the channel marker ''1'' and the point of land southwest of channel marker ''5''; containing approximately 30.3 ha (74.8 acres).

(ii) Watercraft are required to proceed at slow speed from October 1 through March 31, inclusive.

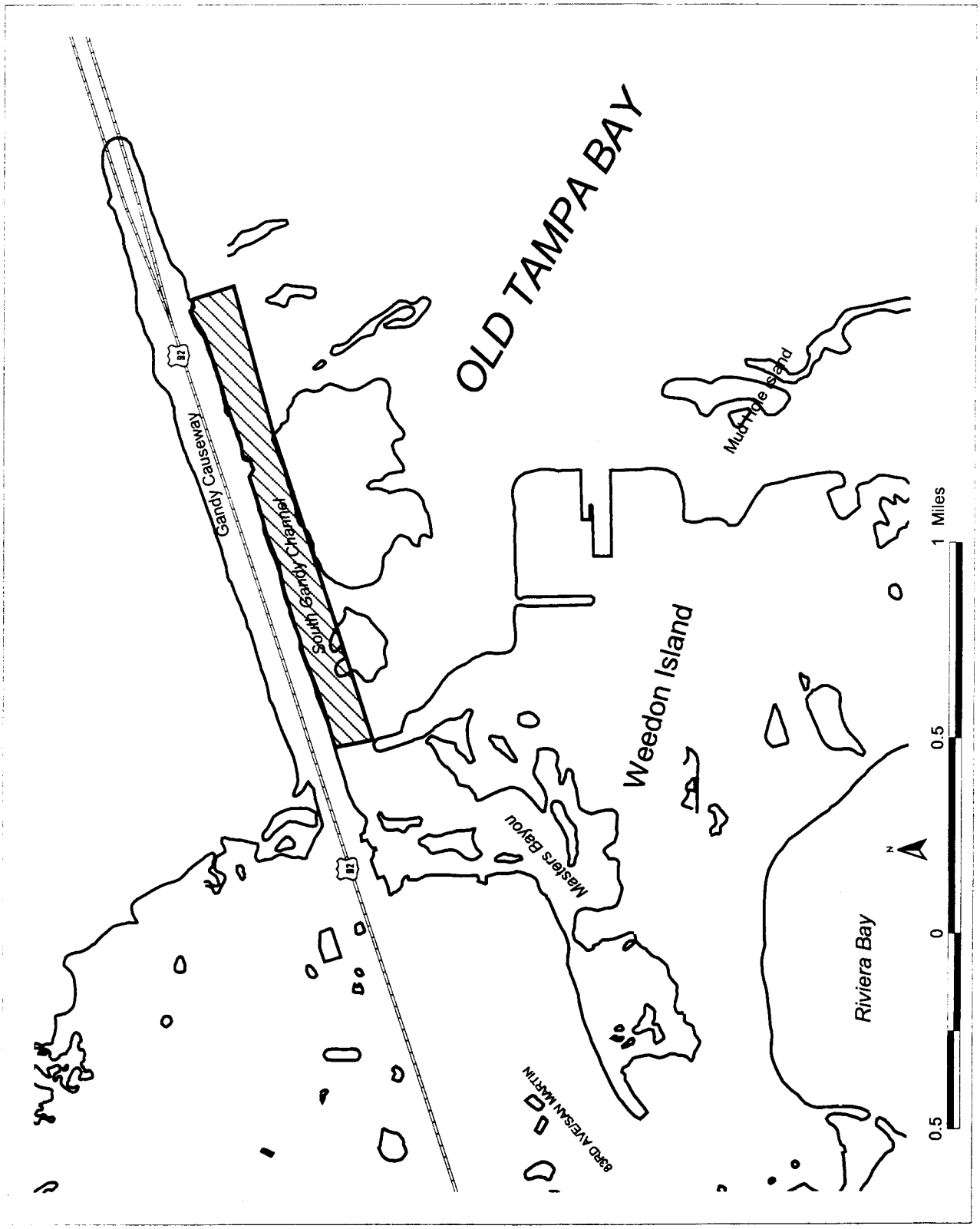

Figure 5. Proposed South Gandy Navigation Channel Manatee Refuge

(2)(i) The TECO Big Bend Manatee Refuge (Figure 6) is in Hillsborough County and is described as the entrance channel, and those waters south of the proposed manatee sanctuary at the TECO Big Bend electric generating station described in paragraph (a)(10) of this section; containing approximately 93.5 ha (231 acres).

(ii) Watercraft are required to proceed at slow speed from October 1 through March 31, inclusive.

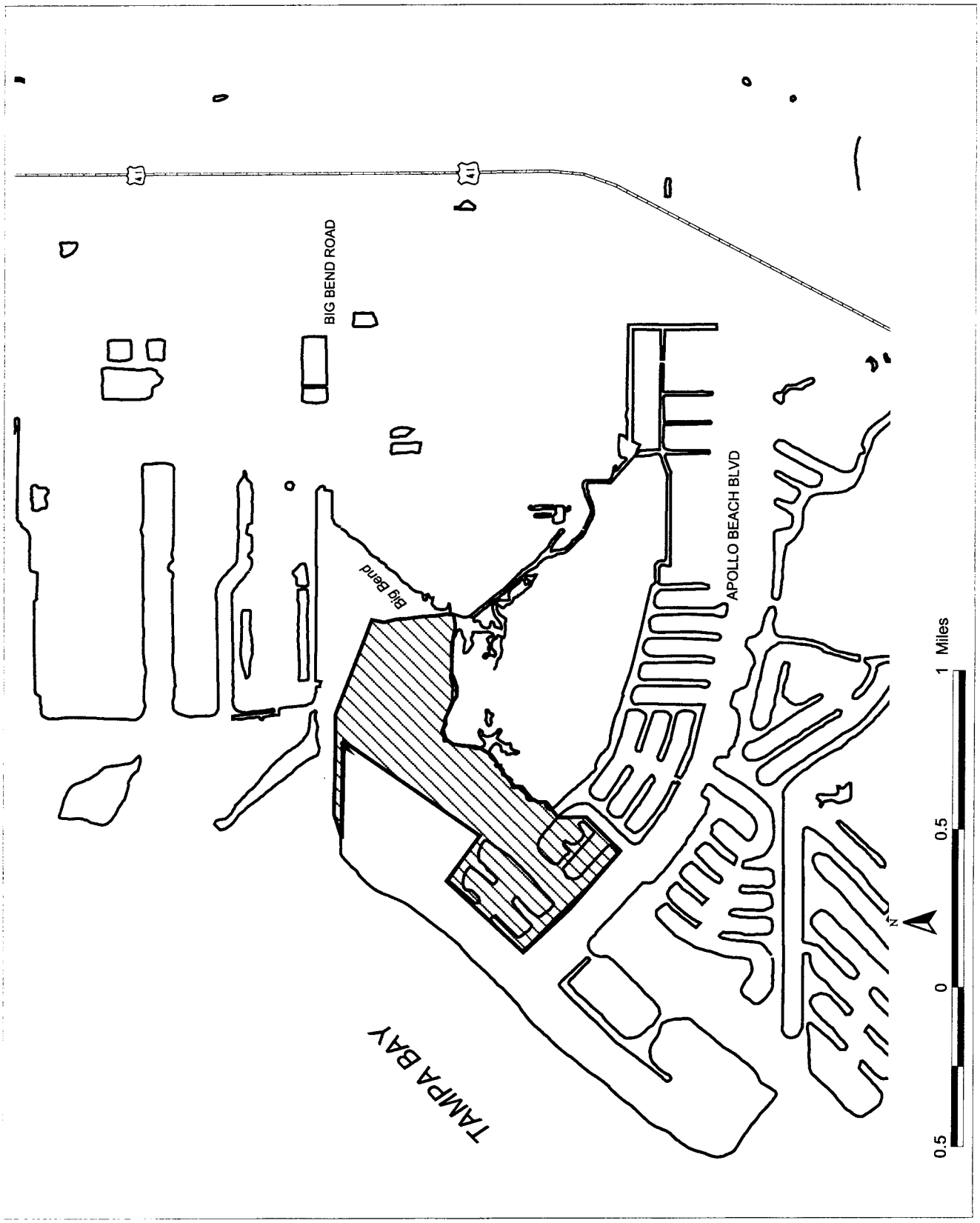

Figure 6. Proposed TECO Big Bend Manatee Refuge

(3)(i) The Port Sutton Manatee Refuge (Figure 7) is described as those waters surrounding the proposed Port Sutton manatee sanctuary described in paragraph (a)(11) of this section, including all waters within Port Sutton, Hillsborough County; containing approximately 39.2 ha (96.9 acres) more or less.

(ii) Watercraft are required to proceed at slow speed from October 1 through March 31, inclusive.

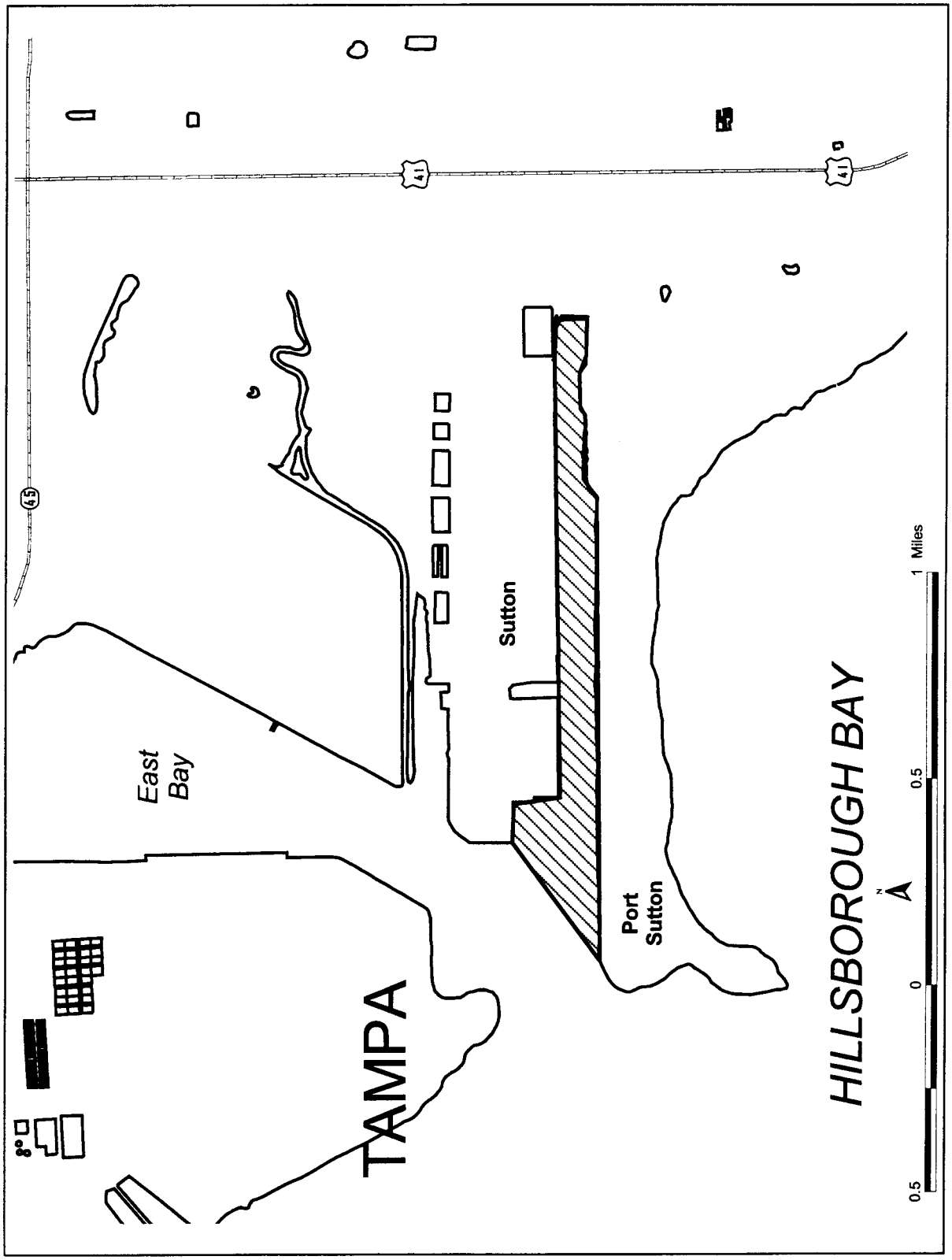

Figure 7. Proposed Port Sutton Manatee Refuge

(4)(i) The Pansy Bayou Manatee Refuge (Figure 8) is described as that portion of Sarasota Bay, Sarasota County, lying northwesterly of a line 45.7 meters (150 feet) northwesterly of and parallel with a line perpendicular to the John Ringling Parkway Bridge connecting St. Armands Key to City Island from the northwesterly end of said bridge, southwesterly of a line 228.6 meters (750 feet) northeasterly of and parallel with the centerline of the John Ringling Parkway (running northwesterly from St. Armands Key), northwesterly of a line 320 meters (1,050 feet) northwesterly of and parallel with a line perpendicular to the aforementioned John Ringling Parkway Bridge connecting St. Armands Key to City Island from the northwesterly end of said bridge, and southwesterly of a line 990.6 meters (3,250 feet) northeasterly of and parallel with the centerline of the aforementioned John Ringling Parkway (running Northwesterly from St. Armands Key); containing approximately 47 ha (116.1 acres).

(ii) Watercraft are required to proceed at slow speed all year.

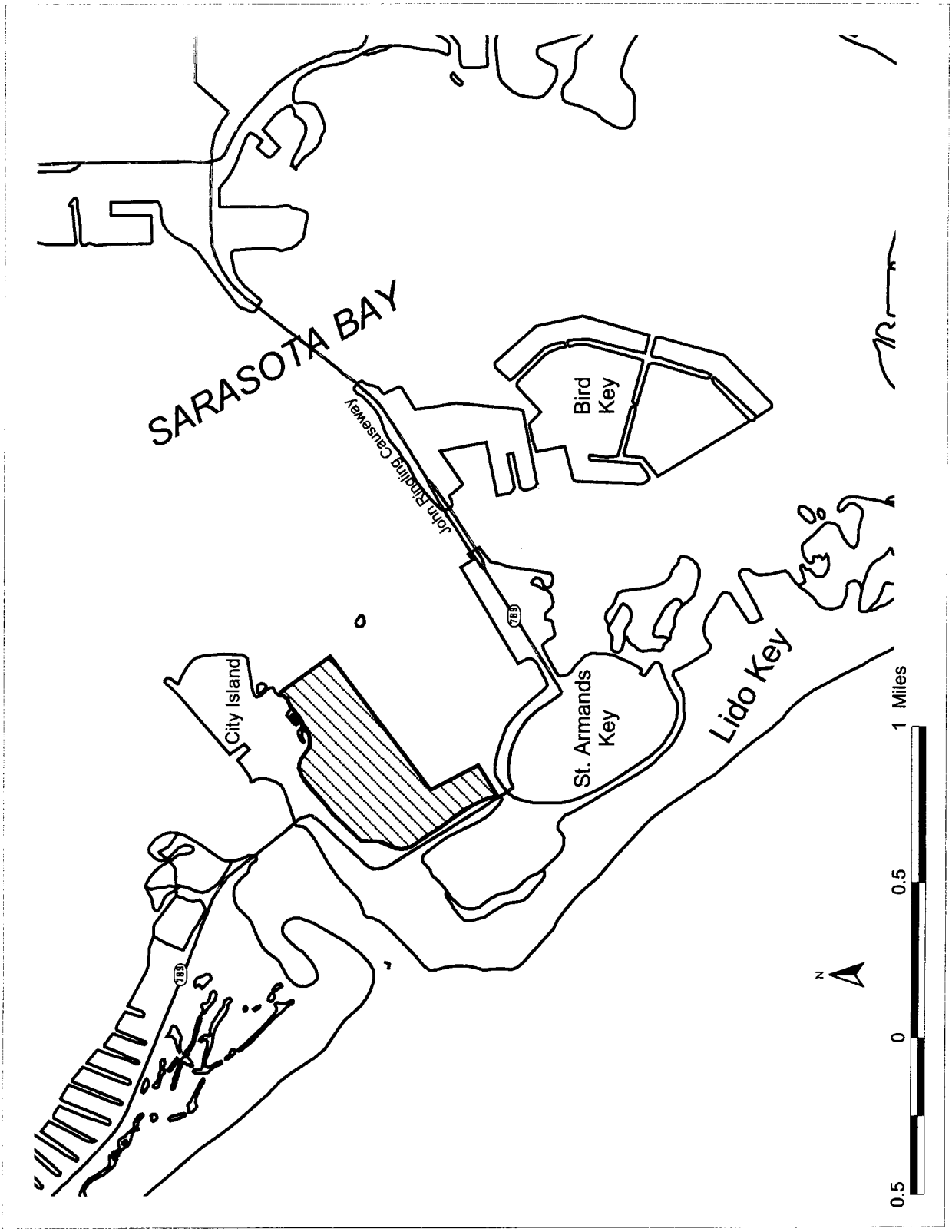

Figure 8. Proposed Pansy Bayou Manatee Refuge

(5)(i) The Little Sarasota Bay Manatee Refuge (Figure 9) is described as those waters lying southerly of a line that bears north 90 degrees 00′00″ E (true) and runs through the southerly tip of the first unnamed island south of Red Intracoastal Waterway Channel Marker ''40'' (latitude 27 degrees 10′07″ N, longitude 82 degrees 30′05″ W) and those waters lying northerly of the Blackburn Point Bridge, Sarasota County; containing approximately 214.2 ha (529.4 acres).

(ii) Watercraft are required to proceed at slow speed (channel exempt) all year.

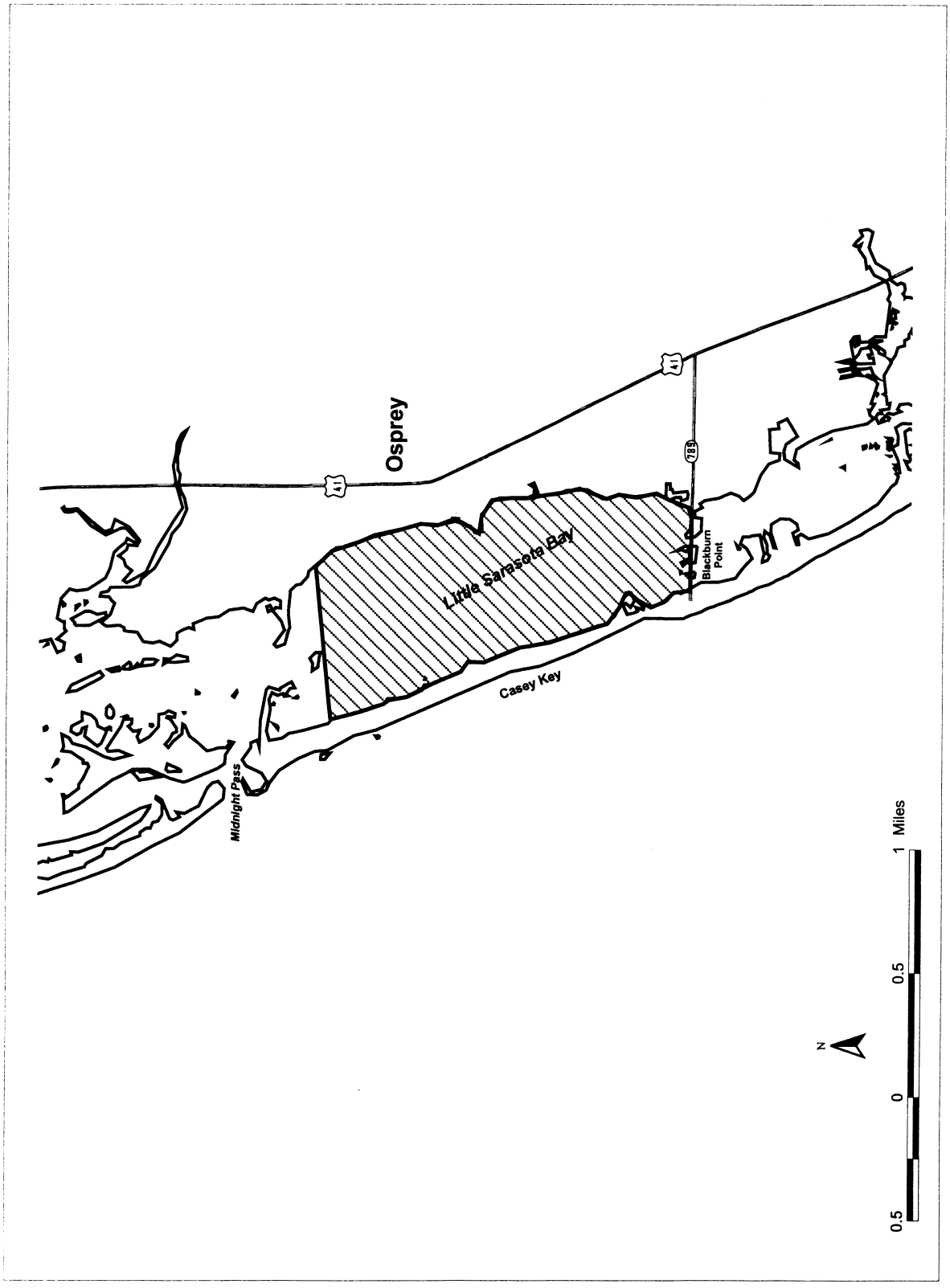

Figure 9. Proposed Little Sarasota Bay Manatee Refuge

(6)(i) The Lemon Bay Manatee Refuge (Figure 10) is described as those waters of Lemon Bay lying south of the Sarasota/Charlotte County boundary and north of a line north 60 degrees 14′00″ E (true) parallel with a series of small islands approximately 1.6 kilometer (1 mile) south of the Bay Road Bridge; containing approximately 379.9 ha (938.8 acres).

(ii) Watercraft are required to proceed at slow speed (channel exempt) all year.

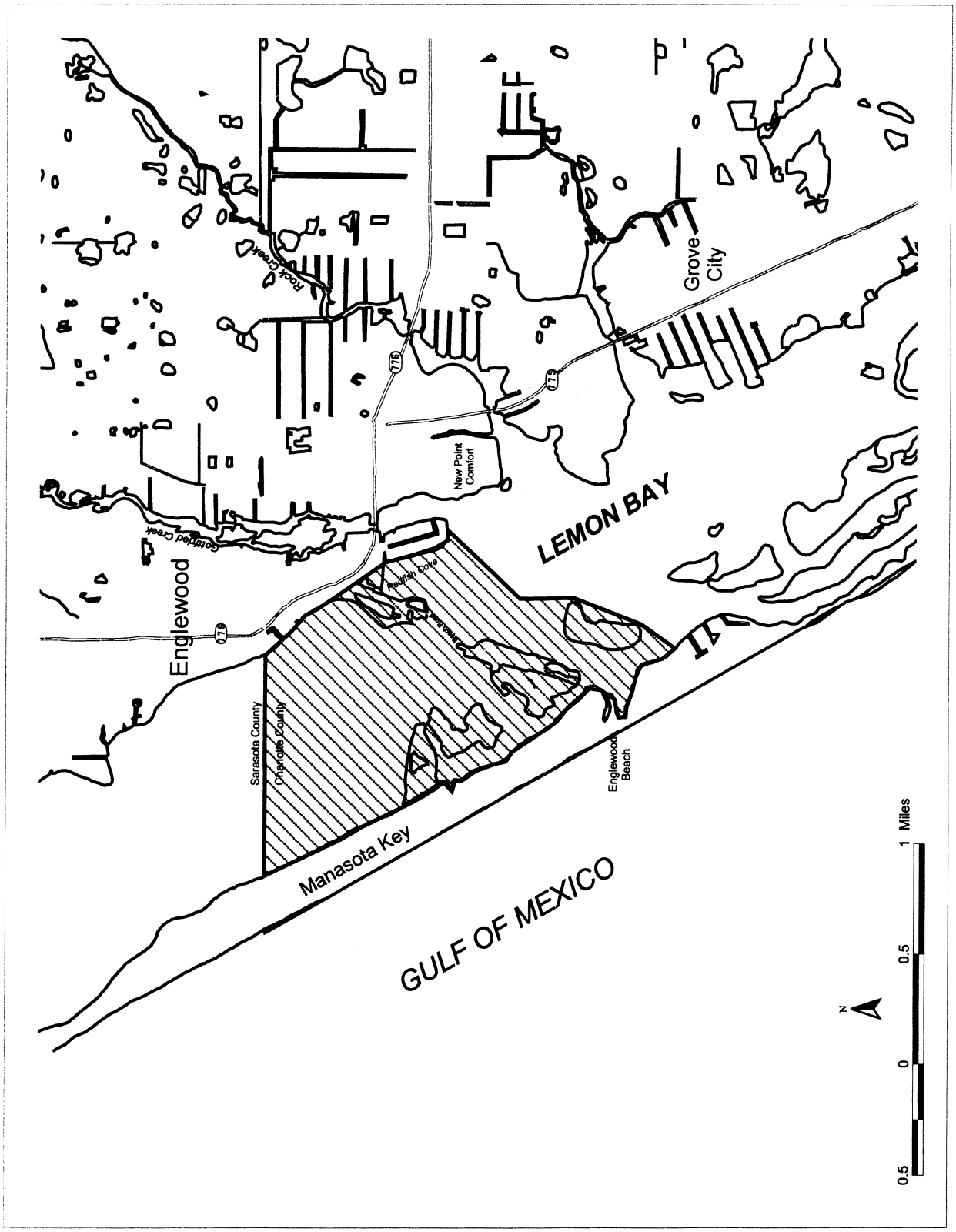

Figure 10. Proposed Lemon Bay Manatee Refuge

(7)(i) The Peace River Manatee Refuge (Figure 11) is described as all waters of the Peace River and associated water bodies north and east of the Tamiami Trail (U.S. Highway 41), Charlotte and Desoto Counties; containing approximately 4,892 ha (12,088.1 acres).

(ii) Watercraft are allowed to travel at a maximum speed of 40 kilometers per hour (25 miles per hour) all year within the marked navigation channel. Outside of the marked channel, watercraft are required to proceed at slow speed all year.

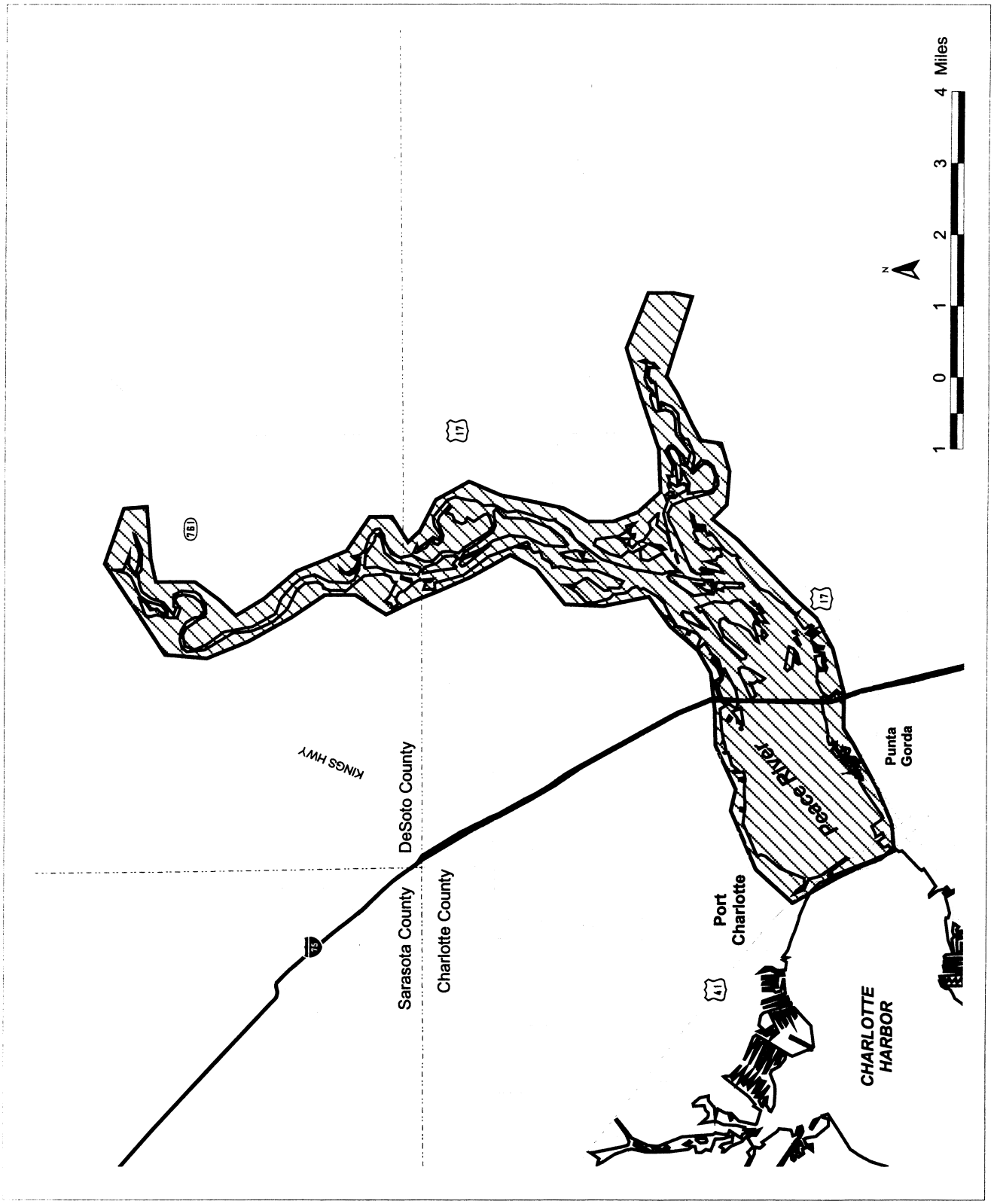

Figure 11. Proposed Peace River Manatee Refuge

(8)(i) The Shell Island Manatee Refuge (Figure 12) is described as all waters within the marked Intracoastal Waterway channel between Green Marker ''99'' (approximate latitude 26 degrees 31′00″ N, approximate longitude 82 degrees 00′52″ W) and Green Marker ''93'' (approximate latitude 26 degrees 31′37″ N, approximate longitude 81 degrees 59′46″ W), Lee County; containing approximately 32.6 ha (80.5 acres).

(ii) Watercraft are required to proceed at slow speed (channel included) all year.

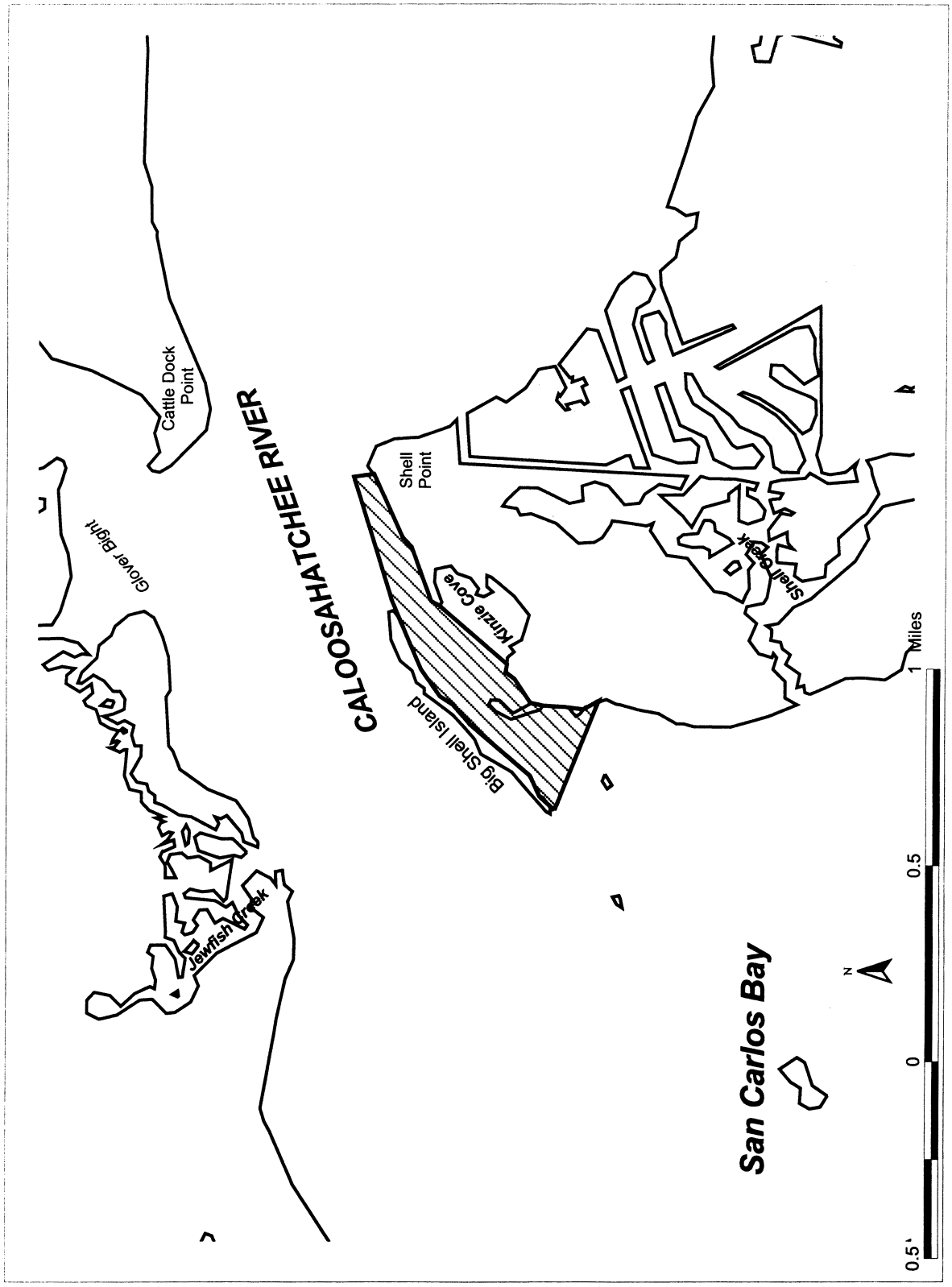

Figure 12. Proposed Shell Island Manatee Refuge

(9)(i) The Haulover Canal Manatee Refuge (Figure 13) is described as all waters lying within a radius of 0.8 kilometer (0.5 mile) of each end of the Haulover Canal and including the canal itself, in Brevard County; containing approximately 408.1 ha (1,008.3 acres).

(ii) Watercraft are required to proceed at slow speed (channel included) all year.

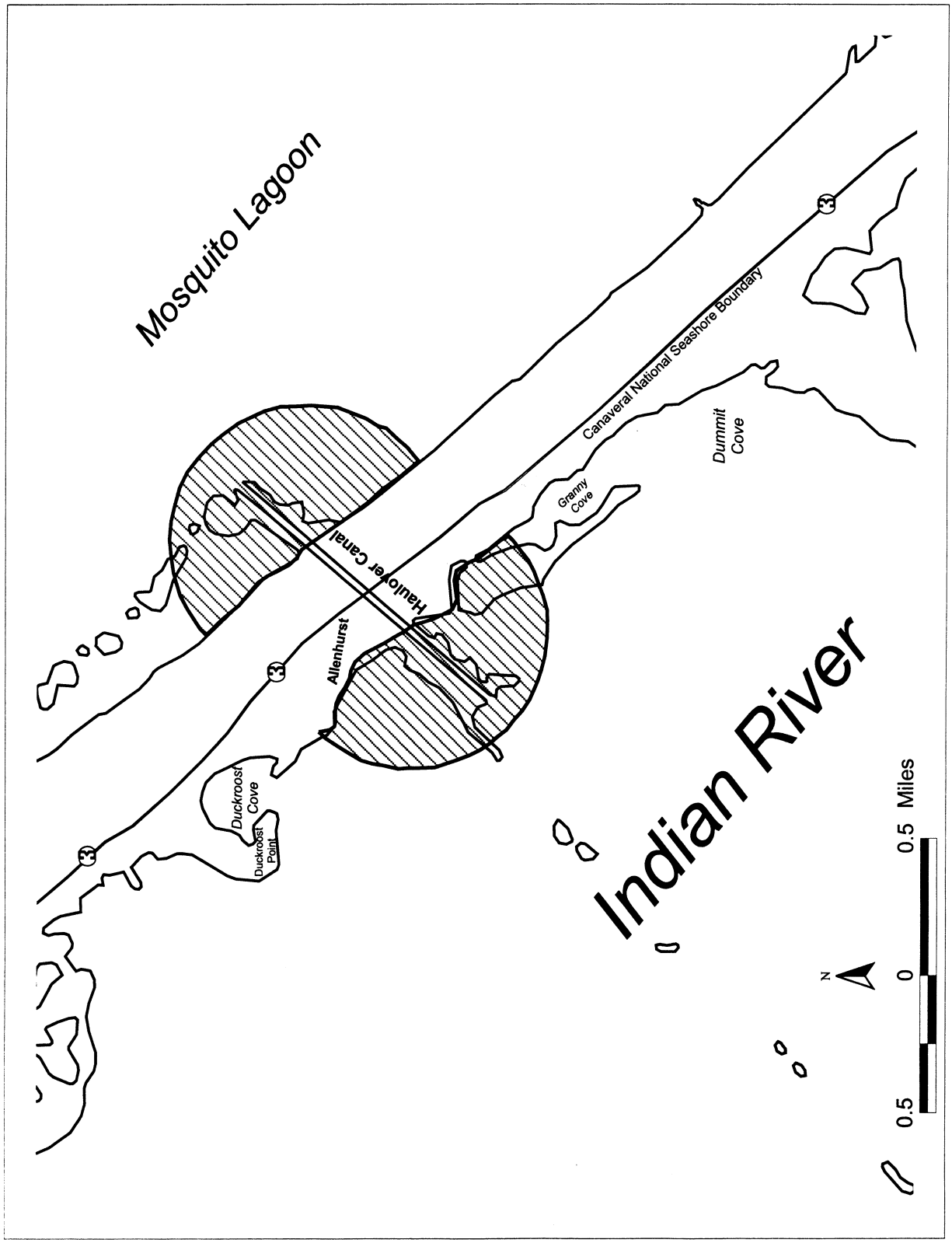

Figure 13. Proposed Haulover Canal Manatee Refuge

(10)(i) The Barge Canal Manatee Refuge (Figure 14) is described as all waters lying within the banks of the Barge Canal, Brevard County, including all waters lying within the marked channel in the Banana River that lie between the east entrance of the Barge Canal and the Canaveral Locks; containing approximately 276.3 ha (682.7 acres).

(ii) Watercraft are required to proceed at slow speed (channel included) all year.

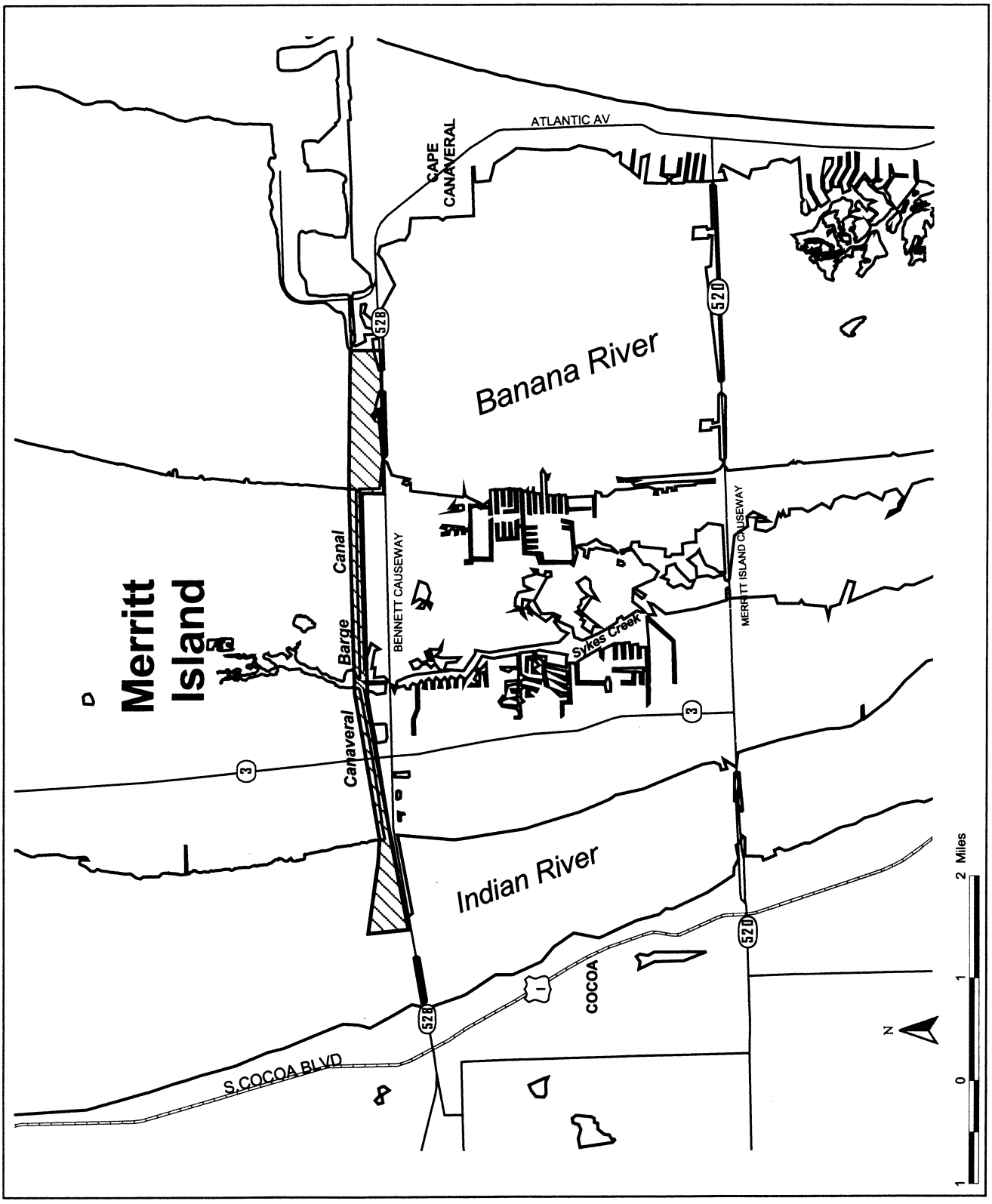

Figure 14. Proposed Barge Canal Manatee Refuge

(11)(i) The Sykes Creek Manatee Refuge (Figure 15) is described as all waters, including the marked channel in Sykes Creek, Brevard County. In particular, the portion of Sykes Creek southerly of the southern boundary of that portion of the creek commonly known as the ''S'' curve (said boundary being a line bearing East from a point on the western shoreline of Sykes Creek at approximate latitude 28 degrees 23′24″ N, approximate longitude 80 degrees 41′27″ W) and northerly of the Sykes Creek Parkway; containing approximately 342.3 ha (845.8 acres).

(ii) Watercraft are required to proceed at slow speed (channel included) all year.

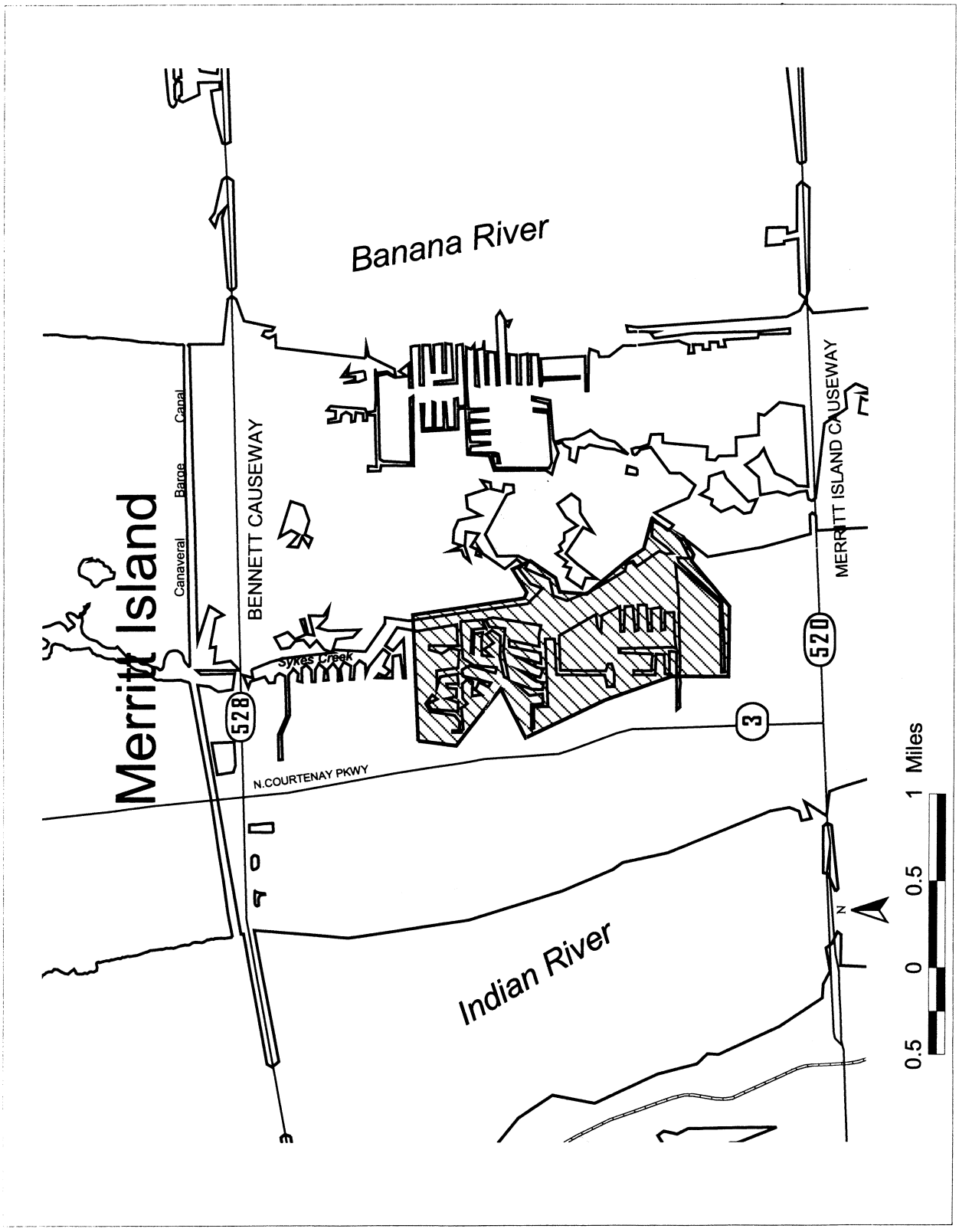

Figure 15. Proposed Sykes Creek Manatee Refuge

(12)(i) The Cocoa Beach Manatee Refuge (Figure 16) is described as the waterbody west of Municipal Park within the City of Cocoa Beach commencing at a point 45.7 meters (150 feet) west of the southwest corner of the canal running between Willow Green and Country Club Roads, thence southerly (and parallel to the golf course shoreline) to a point 45.7 meters (150 feet) west of the southwest corner of the Municipal Golf Course shoreline, thence south to marker ''502,'' thence westerly (inclusive of the area known as the ''400 Channel'') to Red marker ''500,'' thence northerly to Red marker ''309,'' inclusive of the ''400 Channel,'' thence southeasterly to the southwest corner of the canal referenced as the point of origin, all these waters being within the eastern half of Sections 8 and 17, Township 25 South, Range 37 East; containing approximately 23.9 ha (59.1 acres).

(ii) Watercraft are required to proceed at slow speed all year.

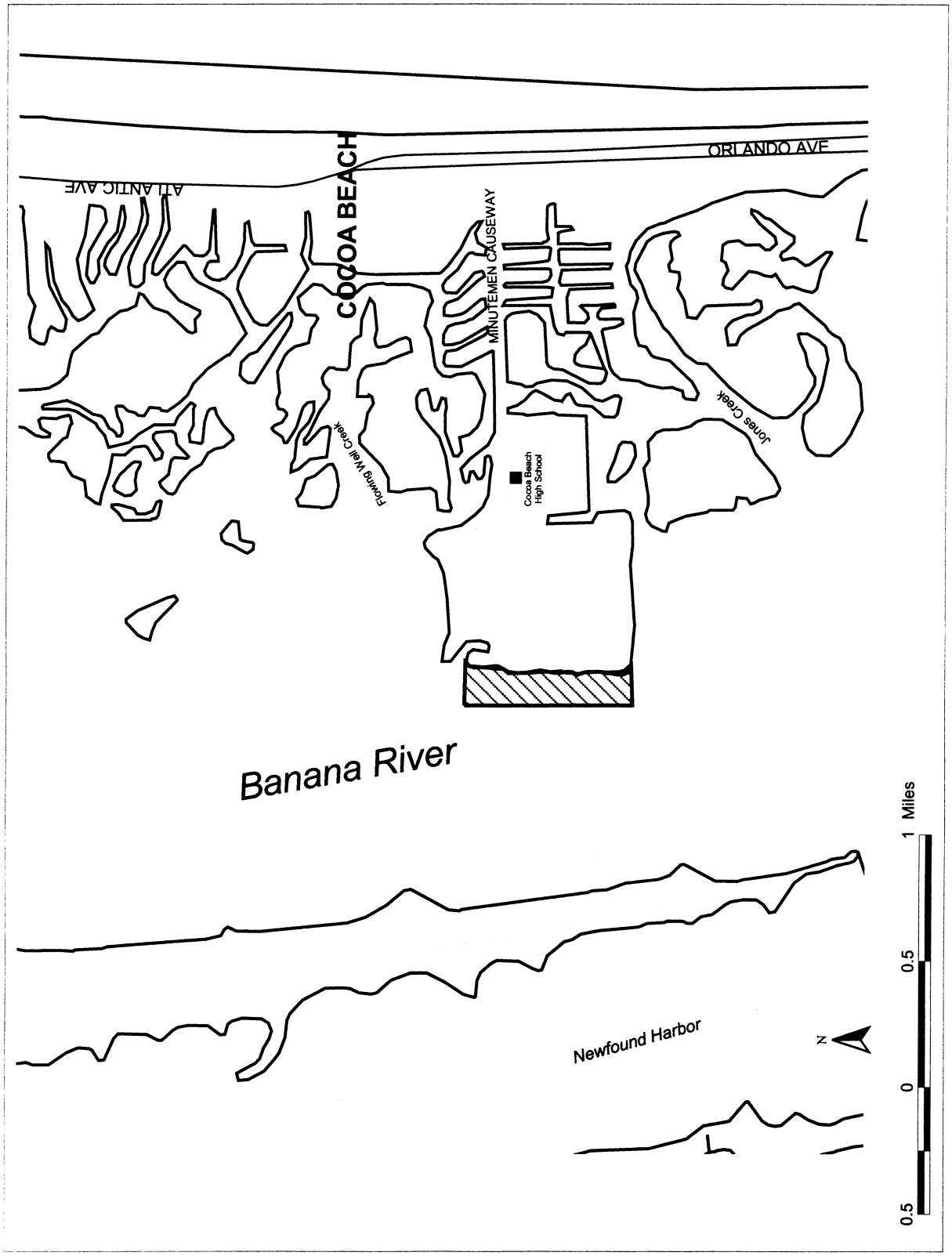

Figure 16. Proposed Cocoa Beach Manatee Refuge

Dated: August 2, 2001.

J. Steven Griles,

Deputy Secretary.

[FR Doc. 01–19929 Filed 8–9–01; 8:45 am]

BILLING CODE 4310–55–C

Federal Register

Friday,
August 10, 2001

Part V

Department of Transportation

Federal Railroad Administration

49 CFR Part 209 et al.

Standards for Development and Use of Processor-Based Signal and Train Control Systems; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 209, 234, and 236

[Docket No. FRA–2001–10160]

RIN 2130–AA94

Standards for Development and Use of Processor-Based Signal and Train Control Systems

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: FRA is proposing a performance standard for the development and use of processor-based signal and train control systems. The proposed rule also covers systems which interact with highway-rail grade-crossing systems, requirements for notifying FRA prior to installation, and requirements for training and recordkeeping. FRA is proposing these standards to ensure the safe operation of trains on railroads using processor-based signal and train control equipment.

DATES: *Written Comments.* Comments must be received by October 9, 2001. Comments received after that date will be considered to the extent possible without incurring additional expense or delay.

Public Hearings: Upon specific request, FRA will hold public hearings as appropriate to receive oral comments from any interested party.

ADDRESSES: Comments should be sent to the Docket Clerk, Docket Management System, U.S. Department of Transportation Room PL 401, 400 Seventh Street, SW., Washington, DC 20590–0001. If you wish to receive confirmation of receipt of your written comments, please include a self-addressed, stamped postcard.

The docket management system is located on the Plaza level of the Nassif Building at the Department of Transportation at the above address. You can review public dockets there between the hours of 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. You can also review comments on-line at the DOT Docket Management System web site at *http://dms.dot.gov.*

You may submit comments electronically by accessing the Docket Management System web site at *http://dms.dot.gov* and following the instructions for submitting a document electronically.

FOR FURTHER INFORMATION CONTACT: William H. Goodman, Staff Director, Railroad Signal Program, Office of Safety, FRA, 1120 Vermont Avenue, NW, Washington, DC 20590 (telephone: 202–493–6325); Grady C. Cothen, Jr., Deputy Associate Administrator for Safety Standards, FRA, 1120 Vermont Avenue, NW, Mail Stop 25, Washington, D.C. 20590 (telephone: 202–493–6302); Cynthia B. Walters, Office of Chief Counsel, FRA 1120 Vermont Avenue, NW, Mail Stop 10, Washington, DC 20590 (telephone: 202–493–6064); or David T. Matsuda, Office of Chief Counsel, FRA, 1120 Vermont Avenue, NW, Mail Stop 10, Washington, DC 20590 (telephone: 202–493–6046).

SUPPLEMENTARY INFORMATION:

I. Statutory Background

The Federal Railroad Administration (FRA) has broad statutory authority to regulate all areas of railroad safety. 49 U.S.C. 20103(a); 49 CFR 1.49. Until July 5, 1994, the Federal railroad safety statutes existed as separate acts found primarily in Title 45 of the United States Code. On that date all of the acts were repealed and their provisions were recodified into Title 49. The older safety laws had been enacted in a piecemeal approach and addressed specific fields of railroad safety. For instance, the Signal Inspection Act, 49 U.S.C. 26 (recodified at 49 U.S.C. 20502 *et seq.* (1994)), has in large part governed the installation and removal of signal equipment for most of the previous century.

Pursuant to its general statutory rulemaking authority, FRA promulgates and enforces rules as part of a comprehensive regulatory program to address the safety of railroad track, signal systems, railroad communications, rolling stock, operating practices, passenger train emergency preparedness, alcohol and drug testing, locomotive engineer certification, and workplace safety. For example, in the area of railroad signal and train control systems, FRA has issued regulations, found at 49 CFR part 236 (''Part 236''), addressing the security of signal apparatus housings (49 CFR 236.3), location of roadway signals (49 CFR 236.21), and the testing of relays (49 CFR 236.106). Hereafter all references to parts shall be parts located in Title 49 of the Code of Federal Regulations.

II. Regulatory Background

Part 236 was last amended in 1984. At that time, signal and train control functions were performed principally through use of electrical circuits employing relays as the means of effecting system logic. This approach had proven itself capable of supporting a very high level of safety for over half a century. However, electronic controls were emerging on the scene, and several sections of the regulations were amended to take a more technology-neutral approach to the required functions (see §§ 236.8, 236.51, 236.101, 236.205, 236.311, 236.813a). This approach has fostered introduction of new, more cost effective technology while providing FRA with strong enforcement powers over systems that fail to work as intended in the field.

Since that time, FRA has worked with railroads and suppliers to apply the principles embodied in the regulations to emerging technology and to identify and remedy initial weaknesses in some of the new products. As a result, thousands of interlocking controllers and other electronic applications are embedded in traditional signal systems. Further technological advances may provide additional opportunities to increase safety levels and achieve economic benefits as well. For instance, implementation of innovative positive train control (PTC) systems may employ new ways of detecting trains, establishing secure routes, and processing information. This presents a far greater challenge to both signal and train control system developers and FRA. This challenge involves retaining a corporate memory of the intricate logic associated with railway signaling, while daring to use whole new approaches to implement that logic—at the same time stretching the technology to address risk reduction opportunities that previously were not available. For FRA, the challenge is to continue to be prepared to make safety-based decisions regarding this new technology, without impairing the development of this field. Providing general standards for the development and implementation of products utilizing this new technology is needed to facilitate realization of the potential of electronic control systems and for safety and efficiency.

FRA has already used its authority to grant waivers and issue orders to support innovation in the field of train control technology. FRA has granted test waivers for the Union Pacific (UP)/Burlington Northern Santa Fe (BNSF) Positive Train Separation (PTS) project in the Pacific Northwest, the National Railroad Passenger Corporation (''Amtrak'') Incremental Train Control System (ITCS) in the State of Michigan, the CSX Transportation Inc. (CSX) Communication-Based Train Management (CBTM) project in Georgia, and the Alaska Railroad PTC project. FRA recently granted conditional

revenue demonstration authority for ITCS. In 1998, FRA issued a final order for the installation of the Advanced Civil Speed Enforcement System (ACSES) on the Northeast Corridor (63 FR 39343, Aug. 21, 1998). See also 64 FR 54410, Oct. 6, 1999 (delaying effective date of such order).

Although FRA expects to continue its support for responsible tests, demonstrations, and implementations, the need for controlling principles in this area is becoming increasingly obvious. This rulemaking provides the forum for identifying and codifying those principles.

FRA's need to review its regulatory scheme with respect to emerging technology in the signal and train control arena was acknowledged by Congress in Section 11 of the Rail Safety Enforcement and Review Act (RSERA) (Pub. L. 102–365, Sep. 3, 1992), entitled ''Railroad Radio Communications.'' The RSERA mandated that the Secretary conduct a safety inquiry to assess, among other areas, the status of advanced train control systems and the need for federal standards to ensure that such systems provide for positive train separation and are compatible nationwide. FRA conducted such an inquiry and submitted a comprehensive Report to Congress on July 8, 1994.

As part of this Report, FRA called for implementation of an action plan to deploy PTC systems (''Railroad communications and Train Control,'' FRA, July 1994). The report forecast substantial benefits of advanced train control technology to support a variety of business and safety purposes, but noted that an immediate regulatory mandate for PTC could not be currently justified based upon normal cost-benefit principles relying on direct safety benefits. The report outlined an aggressive Action Plan implementing a public/private sector partnership to explore technology potential, deploy systems for demonstration, and structure a regulatory framework to support emerging PTC initiatives.

Following through on the Report, the FRA committed approximately $40 million through the Next Generation High Speed Rail Program and the Research and Development Program to support development, testing and deployment of PTC prototype systems in the Pacific Northwest, Michigan, Illinois, Alaska, and the Eastern railroads' on-board electronic platforms. As called for in the Action Plan, the FRA also launched an effort to structure an appropriate regulatory framework for facilitating implementation of PTC technology and for evaluating future safety needs and opportunities. For such a task, FRA desired input from the developers, prospective purchasers and operators of this new technology. Thus, in September of 1997, the Federal Railroad Administrator (''Administrator'') asked the Railroad Safety Advisory Committee to address several issues involving PTC.

III. Railroad Safety Advisory Committee (RSAC)

A. RSAC

Since 1993, FRA has been taking action to promote earlier and more extensive participation by all interested parties in the agency's regulatory processes. That year, the Administrator conducted a series of roundtables on all aspects of FRA's safety program. FRA initiated its first formal negotiated rulemaking in 1994 on the topic of roadway worker safety.

FRA also conducted outreach and a review of its regulatory program under the President's Regulatory Reinvention Initiative and the National Performance Review. FRA concluded that railroad safety would be best served if the agency varied its traditional ''hear and decide'' regulatory style to a new one founded on consensus among those who are benefitted and burdened by the agency's regulations. Implicit in this change is the concept that decisions regarding the best approach to resolution of safety issues should be made with the full participation of all affected parties.

In March 1996, FRA established the RSAC, which provides a forum for consensual rulemaking and program development. The Committee includes representation from all of the agency's major customer groups, including railroads, labor organizations, suppliers and manufacturers, and other interested parties. A list of member groups follows:

American Association of Private Railroad Car Owners (AARPCO)
American Association of State Highway & Transportation Officials (AASHTO)
American Public Transit Association (APTA)
American Short Line and Regional Railroad Association (ASLRRA)
American Train Dispatchers Department/BLE (ATDD/BLE)
Association of American Railroads (AAR)
Association of Railway Museums (ARM)
Association of State Rail Safety Managers (ASRSM)
Brotherhood of Locomotive Engineers (BLE)
Brotherhood of Maintenance of Way Employes (BMWE)
Brotherhood of Railroad Signalmen (BRS)
High Speed Ground Transportation Association
Hotel Employees & Restaurant Employees International Union
International Association of Machinists and Aerospace Workers
International Brotherhood of Boilermakers and Blacksmiths
International Brotherhood of Electrical Workers (IBEW)
Labor Council for Latin American Advancement (LCLAA) (non-voting)
League of Railway Industry Women (non-voting)
National Association of Railroad Passengers (NARP)
National Association of Railway Business Women (non-voting)
National Conference of Firemen & Oilers
National Railroad Construction and Maintenance Association
Amtrak
Railway Progress Institute (RPI)
Safe Travel America
Secretaria de Communicaciones y Transporte (non-voting)
Sheet Metal Workers International Association
Tourist Railway Association Inc.
Transport Canada (non-voting)
Transport Workers Union of America (TWUA)
Transportation Communications International Union/BRC (TCIU/BRC)
United Transportation Union (UTU)
National Transportation Safety Board (NTSB) (non-voting)
Federal Transit Administration (FTA) (non-voting)

When appropriate, FRA assigns a task to RSAC, and after consideration and debate, RSAC may accept or reject the task. If accepted, RSAC establishes a working group that possesses the appropriate expertise and representation of interests to develop recommendations to FRA for action on the task. These recommendations are developed by consensus. If a working group comes to consensus on recommendations for action, the package is presented to the RSAC for a vote. If the proposal is accepted by a simple majority of the RSAC, the proposal is formally recommended to FRA. If the working group is unable to reach consensus on recommendations for action, FRA moves ahead to resolve the issue through traditional rulemaking proceedings.

Recommendations from RSAC come in all varieties. RSAC may recommend continued implementation of existing measures, voluntary initiatives by individual parties, concerted voluntary initiatives by several parties, amendment of existing regulations, new regulatory requirements, or enactment

of legislation, as appropriate. The advice and recommendations of RSAC form the basis for this proposed rule.

On September 30, 1997, the RSAC accepted a task (No. 97–6) entitled ''Standards for New Train Control Systems.'' The purpose of this task was defined as follows: ''To facilitate the implementation of software based signal and operating systems by discussing potential revisions to the Rules, Standards and Instructions (Part 236) to address processor-based technology and communication-based operating architectures.'' The task called for the formation of a working group to include consideration of the following:

- Disarrangement of microprocessor-based interlockings;
- Performance standards for PTC systems at various levels of functionalities (safety-related capabilities); and
- Procedures for introduction and validation of new systems.

RSAC also accepted two other tasks related to PTC, task Nos. 97–4 and 97–5. These tasks dealt primarily with issues related to the feasibility of implementation of PTC technology.

B. The PTC Working Group

FRA gratefully acknowledges the participation and leadership of representatives of the following organizations who served on the PTC Working Group:

AAR, including members from
BNSF
Canadian National
Conrail
CSX
Metra
Norfolk Southern Railway Company
UP
Amtrak
AASHTO
APTA
ASLRRA
ATDD/BLE
BLE
BMWE
BRS
FRA
FTA (non-voting)
HSR/MAG LEV
IBEW
NTSB (non-voting)
RPI
UTU

In order to efficiently accomplish the three tasks assigned to it involving PTC issues, the PTC Working Group empowered two task forces to work concurrently: the Data and Implementation Task Force, which handled tasks 97–4 and 97–5, and the Standards Task Force, which handled task 97–6.

The Data and Implementation Task Force finalized a report on the future of PTC systems and presented it, with the approval of RSAC, to the Administrator on September 8, 1999. Report of the Railroad Safety Advisory Committee to the Federal Railroad Administrator, ''Implementation of Positive Train Control Systems,'' (September 8, 1999). The Data and Implementation Task Force will be involved in monitoring implementation of PTC technology on the joint Illinois/AAR/UP/FRA project.

The Working Group also employed several teams, comprised of representatives from RSAC member organizations, who provided invaluable assistance. An Operating Rules Team was charged with working to ensure that appropriate railroad operating rules are part of any PTC implementation process, and a Human Factors Team was charged with evaluating human factor aspects of PTC systems. Members of these teams serve on both the PTC Standards Task Force and the Data and Implementation Task Force, and additional team members were drawn from the railroad community.

In addition to providing assistance from FRA staff and staff from the Volpe National Transportation Safety Center, FRA responded to a consensus request from the Standards Task Force by contracting for assistance from the Center for Safety-Critical Systems at the University of Virginia.

C. The Standards Task Force

The Working Group, consisting of both the Data and Implementation Task Force and the Standards Task Force, held a meeting at Ponte Vedra Beach, Florida in November 1997 to set the direction of the Standards Task Force. An informal first meeting of the Standards Task Force was held in Washington DC on December 18, 1997, followed by the first formal meeting on February 25, 1998, in Fort Worth, Texas. The Standards Task Force is primarily responsible, with the FRA Office of Chief Counsel and Office of Safety, for drafting this proposed rule.

After the initial informal meeting, the Standards Task Force met almost every month until the last meeting in New Orleans, LA on June 28–29 of 2000. Much documentation was produced at these meetings, due to extensive discussions, presentations and tutorials. This documentation has been placed in the docket for this rulemaking.

The primary mission of the Standards Task Force was to develop regulations that would address the new PTC systems, as well as subsystems and components thereof. PTC systems were described as achieving three core functions: (1) Preventing train-to-train collisions (positive train separation); (2) enforcing speed restrictions, including civil engineering restrictions and temporary slow orders; and (3) providing protection for roadway workers and their equipment operating under specific authorities.

At each meeting, proposed standards were continually developed and modified. The text of the proposed regulation became known as the ''Master Draft.'' Four primary stakeholder groups worked on the Master Draft and presented their own views and opinions as to what should be included in the regulations. As such, consensus was very difficult to obtain. The four stakeholder groups involved were: (1) The federal government, (2) railroad management, (3) railroad labor, and (4) railroad signal and train control system suppliers. The first three groups had voting powers. The supplier group did not have voting powers, but their input was essential and valuable to the other interest groups, especially railroad management, their primary customers. All Standards Task Force meetings were open to all interested parties, and on the average, 30 to 35 people attended. The final two meetings recorded over 50 attendees each. Any attendee was considered a member of the Standards Task Force and had the right to express an opinion at the meeting. However, when consensus was called for, only actual voting members from the PTC Working Group were counted.

In December 1999, the Standards Task Force reached consensus on most outstanding issues. Chiefly, these included the adoption of risk assessment criteria, requirements for independent third party review of validation and verification, applicability of the proposed rule to existing systems, life cycle recordkeeping and reporting, and related matters.

On June 29, 2000, the Standards Task Force presented its consensus recommendation to the entire working group. The PTC Working Group accepted the recommendation with minor changes and forwarded its consensus recommendation to RSAC, which approved it on September 14, 2000.

IV. Major Issues

A. Why a Performance-Based Approach?

What is a Performance Standard?

During the Standards Task Force discussion, FRA noted that the existing ''Rules, Standards and Instructions'' (Part 236) take a performance-oriented approach at the functional level,

although—by virtue of the historical context in which they were initially prepared—they most often reference older technology. During the last decade and a half, this performance-oriented approach to specified functions has permitted the growth of electronic systems within signal and train control systems without substantial regulatory change (albeit with growing ambiguity concerning the application of individual provisions to novel technical approaches). Wishing to maintain historical continuity and hasten preparation of a proposed rule, FRA offered for consideration an initial redraft of Part 236 that attempted a more technology-neutral approach to performance at the functional level, while also addressing PTC functions, as a possible starting point for the group's work.

Carrier representatives found the FRA draft to be unduly constricting, and asked that the group pursue higher-level performance standards. Supplier and labor representatives agreed to this approach, and FRA has endeavored to support the Standards Task Force in pursuing it.

Early in the deliberations of the Standards Task Force, carrier representatives requested that FRA arrange presentations on the use of performance standards in lieu of prescriptive regulations. The group heard from representatives of the Research and Special Programs Administration (RSPA), Federal Highway Administration's Office of Motor Carrier Safety (now Federal Motor Carrier Safety Administration (FMCSA)), and APTA. FRA distributed a guidance document entitled ''Performance Standards: A Practical Guide to the Use of Performance Standards as a Regulatory Alternative,'' (Project on Alternative Regulatory Approaches, September 1981), a copy of which has been placed in the docket of this rulemaking.

In brief overview, the term ''performance standard'' has been variously applied to describe many different forms of regulatory approaches that avoid design specifications and other prescriptive requirements, such as mandates that actions be taken in a particular sequence, or in a particular manner, by the regulated entity. At the most permissive extreme, a performance standard for a railroad operating system might specify an ''acceptable'' level of safety performance (e.g., number of fatalities per million train miles) and avoid any intervening action unless and until the performance of the regulated entity fell below that level. FRA believes that this type of approach would represent an abandonment of the agency's responsibility to promote safety, since it would necessarily assume optimum performance by the regulated entity (a condition not realized in practice) and would prevent helpful intervention until unacceptable consequences had already occurred. The Working Group has not sought to pursue this approach.

The least permissive performance standards include such approaches as requiring that a metal skin on the front of a locomotive have penetration resistance equivalent to that of a given thickness of a specified steel. In this example, the choice of material is left to the designer, but the options are not extensive. *See,* e.g., 49 CFR 238.209.

In the middle range of permissiveness, a performance standard might address acceptable performance parameters for a particular, mandated device, in lieu of a fixed physical description. For instance, FRA requirements for railroad tank cars carrying flammable compressed gas require the application of high temperature thermal protection that can be accomplished using a variety of materials, together with pressure relief valve capacity requirements adequate to permit safe evacuation and burn-off of the car's contents prior to catastrophic failure of the vessel in a fire environment (part 179, appendix B (qualification test procedure)). This combination of regulatory requirements has been highly effective in preventing loss of life from violent detonation of tank cars involved in derailments (although compliance issues have been presented by disintegration of insulation blankets that could not be readily detected under the outer jacket of a car).

Some of the safety statutes administered by FRA contain performance-related criteria. For instance, the Signal Inspection Act, as codified at 49 U.S.C. 20502(b), states:

> A railroad carrier may allow a signal system to be used on its railroad line only when the system, including its controlling and operating appurtenances . . . may be operated safely without unnecessary risk of personal injury.

However, recognizing the need to make a practical application of this broad statement, the law also requires that the system ''has been inspected and can meet any test prescribed under this chapter.'' What could otherwise be deemed a very broad performance standard is thus made more specific in practice (though just how specific the requirements should remain is one of the subjects of this proceeding).

Criteria for Evaluation of Performance-Related Approach

The discussion that follows identifies some of the general considerations that apply to use of performance standards and some of the practical factors that come into play with respect to the safety of processor-based signal and train control technologies.

In response to the report of the Vice President's Commission on Aviation Safety and Security, the Federal Aviation Administration (FAA) published a brief ''Performance-Based Regulations Guide'' (October 31, 1997). That guide notes four ''substantive criteria'' that can be used to determine whether regulations can be written in a performance-based manner:

1. Can the regulatory requirement be stated in terms of a practical goal that can be understood by an individual or company (e.g., meeting a prescribed climb gradient with one engine inoperative)?

2. Will a regulation stated in performance terms be enforceable?

3. Will a performance-based regulation discriminate against smaller companies?

4. Is it possible to establish an equivalency rule that will itself be considered a performance-based regulation? (In FAA terminology, ''an equivalency rule'' is one that is based upon a command-and-control requirement but allows the regulated party to demonstrate that an alternative approach provides an equivalent level of safety.)

The FAA guide noted performance-based regulations should not be used if:

1. Congress has mandated a specific outcome (e.g., ''no smoking'' on domestic flights).

2. The standard would be so vague as to be unenforceable (e.g., ''fly safely'').

3. The FAA cannot agree on an acceptable alternative to a command-and-control standard (e.g., the age 60 rule [for air transport pilots] could be eliminated only if the FAA could prescribe medical and flight testing standards that would provide an equivalent level of safety).

These criteria are generally applicable to the issue presented by this proposal, and other possible concerns can be added. For instance, what if administration of a performance standard would involve too much cost to all regulated entities, small entities only, or the government? What if the performance standard is clear, but verifiable only after the fact and thus enforceable only in a reactive sense? What if the standard is very clear, but the analytical techniques needed to

verify compliance are poorly developed or are not validated?

FRA has identified several criteria of its own with respect to promulgating a performance standard for this area of regulation: simplicity, relevancy, reliability, cost, and objectivity.

First, FRA feels the standard should be simple, because it will apply to many regulated entities. If the standard requires complex mathematics, there may be no way for many of the entities to comply, and if complicated enough, the standard may be beyond FRA's capacity to enforce. For instance, the Standards Task Force has been exposed to many briefings on mathematical techniques used to measure product safety. Often, the mathematics were extremely complicated, the issues surrounding selection of a model so esoteric that only a small fraction of the expert population present fully understood the issues, and at no point was there a consensus that any particular technique was technically superior.

Second, FRA feels the standard should be relevant with respect to safety. There may be many convenient measurable qualities of processor-based systems which are not relevant to safety. For example, the mean time to repair a product subsystem may or may not necessarily be relevant to safety, depending upon the backup method of operation in place.

Third, FRA believes the standard should be reliable in that the test applied should yield similar results each time it is applied.

Fourth, FRA believes demonstrating compliance with the standard should not be unduly expensive. Train control systems have a very good safety record. The cost of proving compliance with the standard should not cost more than the benefits it will bring. Furthermore, a standard could be so exacting that it would prevent the deployment of systems which would very likely improve safety, but which do not meet some extremely difficult or expensive test. Thus a purported safety standard might actually impose safety costs.

Fifth, FRA feels the standard should be objective. A completely objective standard would allow for compliance to be determined through scientific study or investigation. This is critical from a regulatory perspective, because FRA feels it would not be fulfilling its safety mission if it could not verify compliance with the performance standard. Also, an objective standard would allow for sound business planning with respect to budgeting for and development of processor-based systems. Thus, FRA can realize additional safety benefits from this standpoint.

Development of the Proposed Standard

The Standards Task Force considered only two different performance standards, yet determining an adequate method for demonstrating compliance was the key factor in the Standards Task Force's final decision.

The first standard proposed for discussion by the Standards Task Force was a standard which would have required that the implementation of proposed systems lead to safety improvements of 33% to 50%. This standard was proposed in order to address the uncertainties involved in the safety determinations. The theory behind the proposal was that an actual increase in safety by a discrete relative amount would overcome any uncertainties involved in the safety assessment process. In addition to the objectivity problems involved in not necessarily requiring a certain level of confidence in the safety measurements, the most disconcerting issue to the group was the cost of such a standard. It would impose burdensome safety and operational costs. The safety costs would result primarily from railroads not being able to replace products with those which would improve safety by less than the desired margin. The operational costs would result from not being able to replace a product with one that was equally as safe, but less costly. These shortcomings were too severe for the Standards Task Force to warrant further consideration of this option.

The only other performance standard considered by the Standards Task Force was the one which led to the proposed rule: that new products must not degrade safety. This standard was not formally agreed to by the Standards Task Force until a means for demonstrating compliance could be agreed upon. The remainder of the discussions focused on the various ways in which compliance with this standard could be determined, and which of them is the most appropriate.

The first proposal under this standard would have required a comparison of the sample means of the distributions of risk for the proposed product and the current system. This proposal would require demonstration with a minimum ninety-five percent confidence level that the likelihood that the distribution of risk for the proposed system is not less than the sample mean for the current system. The Standards Task Force found cost to be the most serious concern with this proposal. For relatively simple products this approach may be cost-effective. It would be moderately expensive, as it requires some modeling of the risk, but the cost of modeling might still be less than the costs of complying with a specification standard. The most significant costs would be incurred when a proposed system takes advantage of current-generation, high-capability processors. The expense of computing time required to generate statistically significant modeling results would be prohibitive.

A slightly different approach would be to test the standard deviations of the differences in sample means. This approach is not much more complicated than simply testing against the standard deviations. The cost would be roughly the same, however, this approach would pose reliability problems. If the number of simulation cycles were held to a fixed ratio between cycles for the current system and cycles for the proposed product, the standard deviation of the sample mean would decrease in proportion to the square root of the number of simulation cycles. Furthermore, the looseness of the assumptions would affect reliability of this approach as a measurement tool. There could also be significant problems with non-random re-selection of paths in simulations.

The next approach proposed was to weight each risk calculation by a factor of uncertainty, and then run the simulation to see what the relationship is between current risk levels and levels of risk associated with use of the proposed product. This approach would require a higher level of confidence for a lower subjective confidence in the underlying assumptions. This option is more complex than any yet discussed by the Standards Task Force, and does not appear to be either reliable or objective. The Standards Task Force ultimately concluded that this test is too subjective for their purpose.

Also suggested was an approach utilizing statistics of extremes, or extreme value theory. This objective technique is favored for risk analysis in civil engineering and environmental science applications and is designed to overcome the problems which arise when using traditional distribution models to analyze low probability, high consequence events. It is sufficiently complex that there was no consensus in the group as to its effectiveness for train control applications, although the University of Virginia continues to provide the group with more information on this technique. An informal survey of group members revealed that fewer than one tenth of an expert group claimed to be familiar with extreme value analysis. Thus, the Standards Task Force concluded

unfamiliarity with this approach within the industry would probably make it expensive to require.

The final mathematical approach suggested was described as a Bayesian belief network. This is also a complicated test, which appears not totally objective. This approach would require the railroad to show by some high evidentiary standard, such as ''demonstrating to a high degree of confidence,'' that the proposed product would result in no loss of safety. It is this final test which FRA proposes. The Standards Task Force has developed more specific criteria for satisfying the performance standard under this approach using current safety engineering practices and principles within the industry.

Although advantages of and concerns with the proposed standard are addressed in the sections which follow, FRA seeks comments addressing the decisions reached by the Standards Task Force concerning the various standards and compliance methodologies considered and rejected.

Advantages of a Performance-Based Standard

This NPRM presents the highest level performance requirements ever attempted by FRA. To informed advocates of performance-based regulations, the reasons for taking this course are obvious. The emerging technologies documented in the RSAC's Report to the Administrator (''Implementation of Positive Train Control Systems,'' September 8, 1999), reflect an extensive array of electronic applications, including short-range radio frequency (RF) data links (transponders), medium-range RF data links, train location systems employing GPS/DGPS positioning supported by inertial guidance and track database analysis, and logic controllers placed at central office locations, on the wayside and onboard trains. Inputs may be derived from a variety of on-board systems, automatic equipment identification systems, two-way end-of-train telemetry, existing signal and train control systems, and other sources. Additional technologies are on the horizon, and others will no doubt emerge between the date of publication of a final rule in this proceeding and the next revision of the regulations by FRA.

While some new train control systems may not yield all of the same safety benefits that are supported by traditional track circuits (e.g., detection of some broken rails), they may be capable of very nearly eliminating train-to-train collisions and addressing the other PTC core functions. Data derived from train control applications may be used for improved train management, crew management, and other business purposes. Ultimately, PTC technology may permit the transfer of train movement information for use in providing warning at highway-rail grade crossings under conditions that are, today, prohibitively expensive.

In short, the future benefits of emerging railway electronic systems will be substantial, and suppliers and carriers will need a great deal of flexibility to avoid inadvertent limitations on the growth of important safety systems. This rulemaking was commenced to facilitate introduction of these new technologies. A performance-based approach should be the most powerful means of accomplishing that objective because it would:

- Provide the maximum flexibility to design capable systems, increasing the likelihood that all possibilities will be carefully explored;
- Permit designers to optimize systems to address safety and other needs, making systems more attractive to those making capital allocation decisions; and
- Avoid inappropriate requirements that could drive up costs and put the technology out of reach for years to come.

Concerns With a Performance-Based Standard

This notice embodies a very high-level approach to performance standards that would offer unprecedented flexibility for carriers to design and deploy new signal and train control technologies. At the same time, it would require extensive documentation of the safety of the system prior to its introduction in revenue service. This approach has many profound advantages, and notable disadvantages, that deserve scrutiny in this rulemaking.

FRA has also noted significant obstacles to successful implementation of performance standards in this context, as well as reservations with respect to the utility of such standards. These concerns are sufficient to warrant caution and a vigorous public debate.

The first concern that has arisen is the static nature of a fixed performance standard grounded in current safety performance levels. As noted above, this proceeding is intended to facilitate safety improvement through accelerated introduction of new technology. The proposed performance standard described below, which basically provides that the safety of a new system may not fall below the base condition (existing technology, with certain adjustments), sets a modest objective for suppliers and railroads. However, progress is not the inevitable result of technological innovation. It is at least theoretically possible for a railroad to claim greater efficiencies associated with new technology, add modest safety enhancements that go beyond the capabilities of existing signal technology, but delete certain functionalities associated with the existing system or implement the system in a manner that includes significant safety vulnerabilities. The net result could be cost savings with no advance in safety. Yet, unlike today, FRA would lack leverage under the regulations to insist that known vulnerabilities in the system be corrected, even if that could be done on a highly cost effective basis. (FRA would retain its general authority under the Signal Inspection Act, but the extent to which that authority might be impaired could only be determined after extensive litigation, should its exercise be challenged.)

The thought that a performance standard might stagnate safety improvements is not a fanciful concern. Since economic deregulation of the railroad industry (signified most notably by enactment of the Staggers Rail Act of 1980), railroads have progressed toward profitability principally by cutting costs. Strong intermodal competition has caused the railroads to turn much of the resulting savings back to shippers in the form of reduced contract rates. Particularly in the wake of major mergers and consolidations (a condition applicable to each of the four largest railroads today), the pressure from the financial community for cost reduction is particularly strong. This has sometimes led to management decisions based on short-term considerations. FRA regularly deals with the effects of this phenomenon in the context of Safety Assurance and Compliance Programs on the various properties.

Clearly, the railroads have managed to improve their overall safety performance during the past 20 years while also cutting costs, in part by using technology to good advantage. However, the low-hanging fruit is largely gone. Managers and employees are increasingly asked to do more with less, which is a confining business practice. Properly implemented, new signal and train control technology can help reduce workload requirements while also improving asset utilization. Improperly implemented, the technology could stagnate safety improvements.

Second, doubt remains whether the relevant technical, scientific, and railroad signaling communities are fully

prepared to support implementation of this rule. FRA has funded significant research into the safety of processor-based systems. *See, e.g.,* ''Analytical Methodology for Safety Validation of Computer Controlled Subsystems,'' (Luedeke, John, (Battelle) for Volpe National Transportation Systems Center; DOT–VNTSC–FRA–95–8 (April 1994)). Administration of existing regulations, including consideration of waivers associated with novel train control proposals, has provided FRA with the opportunity to become familiar with strengths and limitations of the safety programs of major signal suppliers. Field compliance efforts have provided a reasonably good view of railroads' efforts to implement processor-based technologies. FRA's observations from this experience follow.

The field of system safety for safety-critical control systems is relatively young and remains in flux. Military Standard 882C, ''System Safety Program Requirements'' (U.S. Department of Defense; January 18, 1993), provides an overall framework for safety planning and analysis. A growing body of literature documents good practice in the field. *See, e.g.,* Leveson, Nancy G., ''Safeware: System Safety and Computers,'' Addison Wesley Publishing Company, Inc., 1995. FRA purchased and distributed to Standards Task Force members copies of ''Safety-Critical Computer Systems'' (Storey, Neil; Addison-Wesley Longman (Harlow, England 1996)), a text addressing the subject matter in a way characterized as suitable for a final-year undergraduate or masters-level program in engineering. The FAA, the Nuclear Regulatory Commission, and other Federal agencies have addressed this issue in various ways and continue to conduct relevant research. Parallel efforts internationally include the European Committee for Electrical Standardization (CENELEC) standard prEN50129 ''Railway Applications—Safety-Related Electronic Systems for Signaling,'' (May 18, 1998).

Railroad signal suppliers maintain a strong emphasis on the safety of their systems. However, formal processes to conduct and document safety analyses for new products are not uniform in their content; and FRA is aware of departures from what might be deemed acceptable within the framework of a rule implementing the proposals set forth below. In general, suppliers employ varying safety assurance concepts for their products and are not currently able to provide quantitative information concerning the projected life-cycle safety performance of new products. The vigorous emphasis on more formal methods of safety assurance in the supply community is exemplified by the recent adoption by the Institute of Electrical and Electronic Engineers, Inc. (IEEE), of the new ''Standard for the Verification of Safety for Processor-based Systems Used in Rail Transit Control'' (No. 1483). The lack of complete consensus on the issue of proofs of safety is perhaps best exemplified by the fact that the IEEE standard just referenced does not address validation of these systems.

Recognizing that any performance standard must provide a level playing field for the supply community and clear decisional criteria for FRA's review of safety documentation, FRA asked the Standards Task Force to focus specifically on the requirements for verification and validation and the associated quantization of safety (further discussed below). Although the supply community representatives were able to agree with other Standards Task Force members on general principles that should apply to these safety processes and the metric of Mean Time to Hazardous Event (MTTHE), suppliers were not able to agree to provide estimates of MTTHE based on fully quantitative inputs derived from uniform analytical methods. The possibility remains, therefore, that estimates of residual risk from different suppliers might have different meanings and be based on differing levels of confidence. As public comment is received and considered, FRA will continue to work with the parties to ensure that information provided in support of various products is reasonably comparable.

FRA has also funded research into the application of risk assessment techniques to railroad operations and has made use of risk studies in the development of its own rules and in the evaluation of system safety estimates presented by various parties. Although FRA decision-making with respect to safety has always been founded on a keen appreciation for the elements of risk (event likelihood, severity, and an appropriate means for normalizing exposure), FRA recognizes that future advances in safety and transportation efficiency will necessitate a heavier reliance on often complex risk assessment techniques, as well as system safety principles. Quantitative risk assessments can enlighten decision making by taking into consideration a variety of relevant factors, providing a means of testing the sensitivity of key assumptions, and projecting the risk environment into the future. In an ideal circumstance, risk assessment may help identify critical system safety decisions and shed light on their mitigation well before the potential for hazardous events is realized in the field.

However, at the outset it must be said that use of risk assessment to determine compliance with performance criteria embodied in a regulation presents an awkward problem. Practitioners of risk assessment are the first to point out that they do not purport to provide information that will predict actual levels of performance. Rather, they provide analysis that suggests the ''relative safety'' of the projected system in relation to a base case construct against which it is evaluated. This is a particularly powerful technique to improve the safety of a system, if properly executed. But the results do not constitute direct proof that a particular level of safety will be achieved.

Obviously, this problem could be ''solved'' by simply requiring that an analysis meeting certain criteria show an improvement in safety. However, FRA believes that this approach would ask the wrong question and result in an increasingly parochial focus on the techniques of risk assessment and their proper execution, to the exclusion of the concrete safety issues presented by particular systems. FRA was not established to regulate risk assessment techniques, and attempting to do so would only inhibit the growth of the discipline. Accordingly, FRA has insisted that the proposed performance criterion be stated in absolute terms, with latitude afforded to scale the analytical effort to the problem at hand. Obviously, in the end FRA would have to be convinced that the particular showing was persuasive with respect to the likelihood that the new system would meet or exceed the safety performance of the existing system.

Further, quantitative risk assessment as applied to the safety of railroad operations is best viewed as an art, rather than a science. A proper analysis must correctly describe salient elements of the operating system, correctly assess the contribution of the risk dimension under review to key scenarios, accurately estimate the frequency with which the risk will arise, accurately describe the severity of hazardous events that may occur, and fairly evaluate the impact of mitigating measures on the prevention, or reduction in severity, of the hazardous event. This requires that the analyst(s) be fully conversant with the railroad operating system, that input data be available (and be properly selected if various data are available), that the analysis be structured to produce a credible result, and that the result be

appropriately characterized. There are challenges associated with each of these steps.

FRA is also concerned that a requirement for a risk assessment based on probability or likelihood will refocus safety efforts during development from optimization to post-design justification. That is, FRA fears that the focus will shift to proving that the product is safe enough after it has been designed. This concern is fueled by such facts as: (1) Subsystems and components involving software and/or human factors do not readily lend themselves to risk quantization as electro-mechanical ones do, (2) risk calculations for current operations will most likely be limited in precision, and (3) early FRA involvement in the product development process is not mandated. As William D. Ruckelshaus, former two-time Director of the U.S. Environmental Protection Agency (EPA), has pointed out, ''risk assessment data can be like the captured spy; if you torture it long enough, it will tell you anything you want to know.'' Leveson at 60.

In practice, FRA has had occasion to substantially discount the value of risk assessments in some cases, while relying heavily on the results (together with other information) in other cases. FRA expects that the quality of risk assessment practice will improve over time, as experience is gained and as peer review strengthens the quality of analysis.

Recognizing the need to advance the state of the art with respect to analysis of risk specifically associated with various methods of operations and train control technologies, the Standards Task Force established a team to support development of an ''Axiomatic Safety-Critical Assessment Process'' (ASCAP). At the request of the Standards Task Force, FRA engaged the University of Virginia to develop the ASCAP model as a risk assessment ''toolkit'' for use in implementing this proposed rule. The initial challenge for the ASCAP team and contractor has been to describe the relative safety of the current method of operation on a CSXT line which is operated without a signal system using direct traffic control system rules (the ''base case''). The first comparison case will be the safety of operations on the same line should a traffic control system be installed. The second comparison case will be implementation of the proposed CBTM system, an innovative technology that addresses the PTC core functions.

As this proposed rule was being finalized for review and publication, the ASCAP effort was progressing toward generation of the base case and an initial comparison case. The University of Virginia principal researcher continued to meet with the ASCAP team providing peer review and support for the project. Data was being assembled and reviewed for suitability. A Human Factors Team had been established to assist in formulating input assumptions with respect to the anticipated actions of employees under various conditions associated with the three methods of operations.

FRA believes that the ASCAP model (more fully described below) will represent a significant step forward in the quality of risk assessment methodologies related to train control. If successful, the technique may provide a level of analytical refinement significantly exceeding other known techniques. However, the success of this effort is not inevitable, given the degree of technical difficulty, the relative paucity of detailed data available for use within the model, and the uncertainties with respect to the role of human factors under the three cases. (For instance, CSXT and it employees who will be responsible for maintenance of various aspects of the system have not had experience with respect to maintenance of CBTM in the field. It may be difficult to project all failure modes that could be associated with routine maintenance and with modification of the system over its life cycle.) While it should be possible to benchmark the estimated risk for the base case and the traffic control system against experience on the CSXT line and for similar operations nationally, being certain of the validity for the CBTM case would require extensive, long-term experience in revenue service.

Indeed, for many risk assessment problems, the base case will not be ''known'' in a statistical sense before the work begins because there will not have been sufficient exposure in the specific territory affected, under current or projected conditions, to make collision and other data representative of actual long-term performance. This will require somewhat elaborate construction of a base case scenario (as in the current CSXT ''dark territory'' case mentioned immediately above) to permit consideration of the extent to which local conditions may affect national statistics that could otherwise be applied to the problem.

The Standards Task Force has discussed the fact that some margin of error will be associated with both base and comparison cases in any risk assessment. The group has discussed the need to employ sensitivity analysis to determine the effect of key assumptions and the desirability of putting a value on the extent to which the underlying analysis supports confidence in estimated risk, expressed as a point value or range. After examining several options, the group agreed to a standard fairly characterized as one of reasonableness, with respect to the current state of the art.

Whatever formal risk values emerge from an assessment conducted in conformity with the proposed rule, some statistical variability would apply to post-implementation review of systems. This is true both because risk assessments will provide an imperfect view of a very complex reality, but also because the wide dispersion of the pertinent risk and the seemingly random nature of potentiating events (e.g., a maintenance of way employee leaving a switch open on the main line) make precise predictions impossible. For instance, take the case of removal of an existing automatic block system (ABS) and its replacement by a non-vital communication-based train control system overlaid on track warrant control. The safety documentation for this ''product,'' as reviewed under this proposed rule (including part 235), might show an actual accident history of 2 severe events in the last 20 years, an estimated base risk level of 2.5 such events, and a predicted accident frequency for the new system of one severe event over 20 years into the future. Should the actual experience under the new system (with no change in traffic levels) be one severe event and one moderate event in the first five years, this could indicate the emergence of risk factors not foreseen when the analysis was conducted or simply the occurrence of events well within the range of expected outcomes.

FRA is particularly concerned that, under these circumstances, the dialogue between the FRA and the railroad not proceed based only upon the narrow technical details of risk assessment. Instead, the dialogue should center around the extent to which the events that occurred involved unnecessary harm to employees or the public and require remedial action that is practical and cost effective. If the public is to be served, FRA should not be shackled by its own performance criteria, and *pro forma* compliance with risk assessment should not bar inquiry into whether, as a practical matter, systems ''may be operated safely without unnecessary risk of personal injury.'' No amount of research is likely to make risk assessment a pure science, and no amount of litigation over it will protect employees and the public from patent hazards identified after the fact. FRA is not reassured by the discussion that led

to this proposal that this concern is frivolous, and FRA will not proceed with a final rule in this proceeding until a way has been found to resolve it.

FRA invites comments specifically addressing any of the agency's concerns detailed in this proposal.

Application to Part 235: Risk Assessments and Material Modification of Systems

This set of regulatory proposals includes performance-based rules for new signal and train control systems (including subsystems and components) but does not alter part 235, which governs applications for discontinuance or material modification of a signal system. FRA believes that risk assessment techniques can be helpful in evaluating applications for modification or discontinuance of existing signal systems. However, FRA is not prepared at this time to be bound by risk assessment outcomes in evaluating these applications.

In enacting the Signal Inspection Act, the Congress both authorized FRA to require installation of signal systems and required that FRA review their removal or any reduction in their effectiveness. FRA has been reluctant to order new signal system installations, because it appears that the market functions reasonably well due to the natural constraints associated with the growth of rail traffic. Railroads continue to install traffic control systems where capacity requires it, and those investments provide efficiencies that benefit the health of the railroads while also enhancing safety over the long term, both directly and indirectly.

FRA has also been reluctant, however, to allow removal of signal systems where current travel levels benefit from the safety that they provide, even if the agency would not order installation of a new system under the same circumstances. Tools such as the CRAM II model and the ASCAP model should assist FRA in determining the circumstances under which signalization is helpful. However, FRA is not convinced that the precision those tools can provide will always exceed in quality the judgment of railroad safety professionals who are intimately familiar with the territory and operations, particularly as applied to matters of limited scale.

FRA has also been reluctant to allow, and in recent years has been steadfastly opposed to allowing, elimination of automatic cab signal (ACS) and automatic train control (ATC) functions—functions that directly address, to a considerable degree, the issues of collision avoidance and protection of roadway workers. Certainly risk assessment techniques will be useful in the future to analyze proposals to replace ACS/ATC systems with communication-based PTC alternatives. However, FRA would not expect to seriously entertain arguments, based upon elaborate risk analysis, that less certain safety strategies or modest declines in traffic would support removal of ACS/ATC systems.

B. How Does This Proposal Affect Locomotive Electronics and Train Control?

This rule is prepared against a background of rapid and significant change in locomotive design. This change has direct implications for the future of train control systems onboard locomotives.

In the past, train control functions and systems for control of normal locomotive operating functions have been kept separate. Train control apparatus has applied independent of the normal throttle and braking functions, which were traditionally accomplished by mechanical and pneumatic controls used by the locomotive engineer. Cab signals and ATC/ATS appliances have included a separate antenna for interfacing with the track circuit or inductive devices on the wayside. The power supply and control logic for train control have been separate from other locomotive functions, and cab signals have been displayed from a special-purpose unit. Penalty brake applications have been accomplished by direct operation of a valve that accomplishes a service reduction of brake pipe pressure, and the train control system also functions to ''knock down'' the locomotive's tractive power. In keeping with this physical and functional separation, train control systems on board a locomotive have been considered exclusively within Part 236, rather than the locomotive inspection requirements of part 229.

Onboard locomotives, braking and throttle functions have traditionally worked independently, with discrete mechanical and pneumatic controls. As electronic systems were initially introduced, controls remained separate and distinct. Until recently, electronic controls have been packaged incrementally by various vendors (e.g., speed sensor vendor, brake system vendor, locomotive manufacturer). In locomotives that employ this arrangement, control functions may be distributed among several processors using proprietary software.

During the 1990's locomotive manufacturers (''original equipment manufacturers'' or ''OEMs'') began to integrate discrete functions, tapping certain inputs or outputs of the proprietary systems for informational or control purposes. Most new locomotives are controlled by microprocessors that respond to operator commands while making numerous automatic adjustments to locomotive systems to ensure efficient operation. In lieu of individual gages, operating parameters (such as speed, brake pipe pressure, and amperage) are displayed to the engineer on a single electronic display. The AAR has established Locomotive System Integration (LSI) criteria to promote compatibility among systems and uniformity in the information displayed to the locomotive engineer.

Currently, manufacturers are deploying central processors that may ''run'' a variety of systems simultaneously in a multi-tasking environment. While ''integration'' has been largely functional in the past, including the common display, the control systems themselves may be unified in the future.

Locomotive manufacturers are preparing more capable electronic platforms to support locomotive and train control functions, but to date FRA has taken the position that train control functions should remain separate. Historically, and within the context of existing ACS/ATC systems, train control functions have been required to be carried out in a failsafe manner by ''vital'' systems. Locomotive electronic controls, while designed with a high degree of attention to safety, have thus far not been demonstrated to fail safely with a high degree of reliability, and in individual cases unsafe failures have occurred. In effect, electronic control of locomotive functions has arisen in recent years without regulation, and in some cases products have been deployed prior to adequate analysis and testing. As a result, locomotive engineers have expressed concern regarding the safety characteristics of certain electronic features. Despite the best efforts of OEMs and suppliers, in some cases engineers have been relegated to use of emergency brake valves in the face of blank screens and uncertain availability of normal control functions.

Very clearly, certain locomotive controls are highly safety-critical, and FRA is working with the OEMs to encourage adoption of formal safety methods in the design, verification and validation of locomotive systems. FRA is confident that, over the next few years, OEMs and their suppliers will succeed in improving the quality of safety-relevant locomotive electronic

systems. As that occurs, integration of train control functions with other on-board functions will be appropriate. Until that time, FRA believes that cab signal and train control functions, including innovative PTC technologies, should continue to operate independent of locomotive information and control systems. In the context of developing PTC projects, and with respect to application of required ACS/ATC systems on new locomotives, FRA will for the time being continue to insist upon separation of locomotive and train control functions (absent an affirmative showing by the OEM that essential functions are effectively isolated and implemented in a failsafe manner as required in part 236). However, both for today and the future, FRA sees value in use of the electronic display for cab signal and train control functions, if the generation of the relevant attributes of the display can be made failsafe (with the exception of the very low-probability possibility of a transient fault in the display itself).

FRA seeks comment on this issue and the circumstances under which the final rule should authorize or prohibit integration of locomotive control and train control functions. Should integration of these functions be allowed? If they are integrated, how should in-service failures of various kinds be handled (e.g., failure of one of two displays available to the engineer or failure of the conductor's display). If these functions are integrated, should the entire locomotive electronic system be subject to verification and validation under the new performance standards? If so, to what extent might train control functions be partitioned from other applications to simplify the problem, and in what way?

C. What Risk Assessment Methods Will Be Considered Adequate?

One of FRA's greater challenges concerning this proposed rule will be verification of compliance with the performance-based standard. The Standards Task Force has recommended an enforcement scheme under which railroads would conduct, when required, a risk assessment to show that the performance standard is met. In most cases, FRA envisions that the risk assessment will identify the assigned risk classes for the system, assign a numerical expression for each safety integrity level, specify a target failure rate, and identify the standards upon which the assessment and calculations were made. This information can be used as a basis to measure and identify the likelihood of a hazardous event and the potential for the system to function as intended. With this information, the railroad and FRA can confirm compliance with the performance standard.

The primary goal of the risk assessment required by this proposed rule is to give an objective measure of the levels of safety risk involved for comparison purposes. As such, FRA believes the focus of the risk assessment ought to be the determination of relative risk levels, rather than absolute risk levels. Most of the analytical techniques explored by the Standards Task Force analyzed relative risk levels much more effectively than they analyzed absolute risk levels. Thus, the proposed rule attempts to emphasize the determination of relative risk.

The Standards Task Force realized that risk assessments may be performed using a variety of methods, so they proposed creation of certain guidelines to be followed when conducting risk assessments. FRA feels these guidelines, captured in § 236.909(e) and Appendix B, adequately state the objectives and major considerations of any risk assessment it would expect to see submitted per subpart H. FRA also feels these guidelines allow sufficient flexibility in the conduct of risk assessments, yet provide sufficient uniformity by helping to ensure final results are presented in familiar units of measurement.

One of the major characteristics of a risk assessment is whether it is performed using qualitative methods or quantitative methods. The proposed rule would allow both quantitative and qualitative risk assessment methods to be used, as well as combinations of the two. FRA expects that qualitative methods should be used only where appropriate, and only when accompanied by an explanation as to why the particular risk cannot be fairly quantified. Initially, the Standards Task Force considered allowing only quantitative risk assessment methods to facilitate relative risk comparison. However, suppliers noted that certain risks, such as software coding errors, cannot be fairly or easily quantified, and that the industry practice is to assess such risks qualitatively. FRA invites comments addressing the extent to which qualitative risk assessment methods ought to be considered sufficient.

The Standards Task Force further recommended that railroads/suppliers not be limited in the type of risk assessments they should be allowed to perform to demonstrate compliance with the minimum performance standard. FRA feels that state of the art of risk assessment methods could potentially change more quickly than the regulatory process will allow, and not taking advantage of these innovations could slow the progress of implementation of safer signal and train control systems. Thus, FRA proposes that risk assessment methods not meeting the guidelines of this proposed rule be allowed, so long as it could be demonstrated to the FRA Associate Administrator for Safety that the risk assessment method used is suitable in the context of the particular product. FRA believes this determination is best left to the FRA Associate Administrator for Safety because the FRA would retain authority to ultimately prevent implementation of a system whose Product Safety Plan does not adequately demonstrate compliance with the performance standard under the proposed rule.

Regardless of the risk assessment method used, FRA prefers the same method to be used for both previous condition (base case) calculations and calculations of risk associated with the proposed product. FRA prefers similar if not identical methods to be used so that meaningful comparisons can be made.

However, the proposed rule does not mandate that identical methods be used in every case. FRA is aware that some types of risk are more amenable to measurement by using certain methods rather than others because of the type and amount of data available. For example, in almost all situations where advanced train control technology will be economically viable, safety risk data and accident histories will often be more abundant for the previous condition than for operation with the proposed product. The latter calculation will normally be based on supplier data about the product and modeling of how it is intended to be used on the railroad. Because FRA is interested in ensuring that each relative risk determination is accurate, the proposed rule does not outright mandate that the same assessment method be used. If a railroad does elect to use two different risk assessment methods, FRA will consider this as a factor for PSP approval (see § 236.915(g)). Also, in such cases, FRA will be more likely to require an independent third party review and assessment (see § 236.915(h)).

Section-by-Section Analysis

Section 209.11 Request for Confidential Treatment

FRA proposes an amendment to this section, as recommended by the Standards Task Force, to clarify existing procedures for requesting confidential treatment for documents provided to the

FRA in connection with the agency's enforcement activities. First, the section would be amended to indicate that the procedures governing requests for confidential treatment apply to documents provided to the FRA in connection with the agency's enforcement of both the railroad safety statutes and the railroad safety implementing regulations. Second, the section would be amended to clarify the definition of what activities constitute FRA enforcement activities. Under the revised definition, enforcement would include receipt by the FRA of documents required to be submitted by FRA regulations, and all documents received by the FRA in connection with FRA's investigative and compliance activities, in addition to the development of violation reports and recommendations for prosecution.

Section 234.275 Processor-Based Systems

Section 234.275 proposes standards for highway-rail grade crossing warning systems using new or novel technology or providing safety-critical data to any product governed by subpart H of part 236. Currently part 234 provides requirements for the maintenance, inspection, and testing of highway-rail grade crossing warning systems. In September 1994, FRA issued a final rule on part 234 (Grade Crossing Signal System Safety, 59 FR 50,086, Sep. 30, 1994), but the final rule did not address processor-based warning systems which are integrated with signal and train control systems. FRA feels it is necessary for these types of systems to be addressed in subpart H because of the potential for their integration or interaction with processor-based signal and train control systems. With the large number of processor-based warning systems currently installed at the nation's highway-rail grade crossings, however, it would be unrealistic to attempt to bring all of those within the scope of subpart H. The processor-based warning systems currently in use and meeting the maintenance, inspection, and testing requirements of part 234 do an admirable job of warning highway users. The Standards Task Force formed a team of its members to identify such items as PTC system data to be transmitted to and integrated with highway traffic control/information systems (future capability). See ''Implementation of Positive Train Control Systems,'' page viii (September 8, 1999). This focus captured the potential uses of Intelligent Transportation System (ITS) technology at highway-rail grade crossings. This proposed requirement identifies which processor-based highway-rail grade crossing warning systems are subject to the requirements of subpart H of part 236.

Paragraph (a) provides that relevant definitions of part 236, subpart H, apply to this section.

Paragraph (b) proposes a standard for whether a highway-rail grade crossing warning system must meet the requirements of subpart H. ''New or novel technology'' is defined in the third sentence of the paragraph. FRA envisions new or novel technology to include such technology as that incorporated in new designs which do not use conventional track circuits or that used in ITS, which utilize data provided through advanced signal and train control systems to warn motor vehicle drivers of approaching trains. FRA does not intend for new or novel technology to include any technology used in current systems (as of the effective date of this rule). FRA is considering tailoring this definition to more accurately reflect the intent of the Standards Task Force, which was to include only technology not previously recognized for use in applications subject to part 234.

Paragraph (c) proposes requirements for equipment subject to this section. These are additional requirements which must be included in the PSP.

Paragraph (d)(1) is proposed to confirm that this section in no way authorizes deviation from the requirements of the Manual for Uniform Traffic Control Devices (MUTCD). Current ''wayside'' warning devices are standardized by the MUTCD. The MUTCD sets forth the basic principles that govern the design and usage of traffic control devices for all streets and highways open to public travel regardless of type of class or the governmental agency having jurisdiction. Part VIII of the MUTCD applies to traffic control systems for highway-rail grade crossings. Traffic control systems for such crossings include all signs, signals, markings and illumination devices along highways approaching and at crossings. Traffic control systems are required to be consistent with the design and application of the standards contained within the MUTCD.

Section 236.0 Application

As a general matter, this proposed rule would apply to all railroads, with two exceptions. First, railroads which operate on track wholly separate from the general railroad system of transportation are excepted from all requirements of part 236. Second, rapid transit operations in an urban area which are not connected to the general railroad system of transportation would be unaffected by the requirements of part 236. FRA proposes this change in language solely to standardize the application of all of the federal regulations related to railroad safety. For additional information on the extent and exercise of FRA's safety jurisdiction, see 49 CFR part 209 appendix A as amended on July 10, 2000 (65 FR 42544).

Section 236.18 Software Management Control Plan

This section proposes a requirement for all railroads to adopt a software management control plan to assure that software used in processor-based signal and train control equipment in service is the version intended by the railroad to be in service at each location. Simply put, a software management control plan is an inventory of software at each equipment location. As a processor-based signal and train control system ages and experiences modifications (i.e., changing operating conditions or upgrades in hardware and software), the software management control plan should be updated accordingly, providing traceability to previous versions of software. One should always be able to determine from the software management control plan precisely what software is installed at each equipment location in the field. This proposed requirement would provide an audit trail to determine if the correct software is installed at the correct locations for all processor-based signal and train control systems on a railroad.

FRA proposes this requirement because for a considerable time after the introduction of processor-based equipment into signaling systems, components of such systems were not always handled responsibly. It was not unusual for railroad employees to carry in their clothing pockets printed circuit (PC) boards and the programmable memory devices (PROMs) which plug into those boards. When driving to equipment locations, sometimes remote, these employees would even recklessly place PC boards and PROMs in tool bins and tool boxes. When troubleshooting a piece of equipment, it was common practice to simply exchange the failed PC board with ones from the selection the employee had on hand until the device appeared to function as intended. The pulled board was often saved for the purpose that it might work in another device. For this and other reasons, in the Orders of Particular Applicability for processor-based train control systems on the Northeast Corridor (63 FR 39343, 52 FR 44510),

PROMs were required to be soldered in place in order to assure proper software versions were installed on locomotives.

With the proliferation of processor-based equipment and use of PROMs with both erasable and non-erasable memory, it is no longer practical to require the soldering of PROMs on PC boards. A software management plan will track the version of software which should be and is in use at all equipment locations on a signal and train control system. Therefore, a requirement for software management control plans would provide adequate assurance that processor-based equipment is programmed with the correct software version.

The inventory should identify, among other things, the software by version number. FRA would expect the software management control plan identify and document for each equipment location the executive or application software name, software version number, software revision number, date of software revision, and a description of cyclic redundancy check for verifying PROM contents. The Task Force had initially considered a requirement that railroads adopt configuration management plans, which would cover both software and hardware dealing with safety-critical aspects of processor-based signal and train control systems. Railroads expressed concern that such a requirement would be unduly burdensome since there is no current configuration management requirement in place, and that certainly simple one-for-one hardware changes need not be tracked. As a practical matter, FRA envisions a limited amount of hardware tracking as a necessary element of software management, since software can reside in portable hardware elements. FRA invites comments specifically addressing this issue.

There is currently no recognized industry standard for software management; however FRA is aware that other computerized systems on railroads such as accounting and communications systems use configuration management control principles. FRA believes that a requirement for software management control plans on signal and train control equipment will enhance the safety of these systems and ultimately provide other benefits to the railroad as well.

This proposed requirement holds railroads responsible for all changes to the software configuration of their products in use, including both changes resulting from maintenance and engineering control changes, which result from manufacturer modifications to the product. In FRA's view, both of these types of changes carry significant safety implications, and should be tracked by the railroad. FRA is aware that most maintenance changes involve replacement of PC boards or software on PROMs, and that changes such as replacement of resistors on PC boards are not normally made by the railroad, but rather the product manufacturer. FRA feels that it would be appropriate for the railroad to track changes no deeper than at the PROM software levels; however, it would be unrealistic and cumbersome to expect the railroad to document changes such as replacement of resistors on PC boards. FRA invites comments specifically addressing this issue.

It is also recognized that this requirement may unduly burden the railroads in situations where they receive inaccurate information from the product manufacturer concerning manufacturer modifications. This poses safety risks because a railroad relying on a manufacturer's statement certifying compatibility, for example, with another manufacturer's system may create a dangerous situation if in fact the two products are not compatible. FRA feels that the railroads should be entitled to rely on the manufacturers' product information since manufacturers obviously know much more about the specifics of their products. In essence, the proposed requirement would impose a strict liability standard on the railroads regardless of culpability. FRA invites comments addressing the issue of whether railroads and suppliers ought to share responsibility for the duty of maintaining proper software configuration, and if so, how such responsibility can be effectively delineated. FRA further invites comments concerning the scope of a product manufacturer's duty to provide accurate information concerning initial software configuration of its products and any engineering control changes.

Paragraph (a) discusses the proposed application of this requirement to all railroads and how it applies to railroads not in operation as of the effective date of this rule. The Standards Task Force intended for this requirement to apply to all systems which would be specifically excluded by the § 236.911 in subpart H. For subpart H products, configuration management for each product must be specified in the PSP and the Operations and Maintenance Manual, as required by §§ 236.907(a)(13) and 236.919(b). These specifications must comply with the railroad's RSPP.

Although the issue of allowance time for compliance was not covered by the Standards Task Force, FRA proposes a 24-month time period as sufficient. FRA welcomes comments specifically addressing this issue.

Paragraph (b) proposes a requirement for software management control plans, and further would require that the plan identify tests required by the system developer and/or the railroads in the event of replacement, modification, and disarrangement.

Section 236.110 Results of Tests

FRA proposes modification of existing § 236.110 to include record keeping requirements for processor-based signal and train control systems under part 236, subpart H and to make it consistent with current agency policy concerning record keeping. As modified, § 236.110 would incorporate in four paragraphs new language and language from current § 236.110.

Paragraph (a) outlines four primary changes. First, FRA proposes to add two new sections to the list of sections to which § 236.110 applies: §§ 236.911 and 236.917(a), both of which apply to processor-based equipment covered by subpart H. Currently, there is no established safety record or performance history for these new types of systems.

Second, paragraph (a) proposes to allow for electronic record keeping. In conjunction with FRA's policy of encouraging such methods where available and appropriate, FRA would like to allow for railroads to be able to avail themselves of this method. FRA proposes that carriers adopting electronic means to record results of tests first obtain FRA's approval through an application process. Requiring FRA approval will establish a process whereby FRA can ensure all the proper information (prescribed in proposed paragraph (a)) is recorded. FRA will also be able to determine where and how the electronic records are available for inspection. FRA notes that if tests are performed by Automated Test Equipment (ATE) the test equipment shall be identified by a unique number, and the test record must reflect that number.

Third, FRA offers changes to § 236.110 to make clear that records filed with a railroad supervisory officer with jurisdiction are subject to inspection and replication by FRA. Railroad supervisory officer is intended to mean an assistant signal supervisor, signal supervisor, or any responsible divisional officer. If a railroad receives approval for electronic record keeping, the railroad shall inform FRA how and where the electronic records will be available for inspection during normal business hours. However, in the case of life cycle records required by proposed § 236.110(c)(1), the railroad shall inform

FRA of the office location(s) where these life cycle records will be kept. If electronic recordkeeping (in accordance with paragraph (e)) is not used for train control test records, then these records must be kept at the locomotive office nearest the test point location(s).

Fourth, paragraph (a) corrects a misprint in current § 236.110, concerning the list of sections to which it applies. The proposed paragraph lists in proper numerical order the sections to which § 236.110 applies.

Paragraphs (b), (c), and (d) provide requirements for how long such records specified in paragraph (a) are to be maintained. Paragraph (b) simply restates a current requirement of § 236.110 (fourth sentence).

Paragraph (c) proposes a requirement to specify the length of time records made in compliance with § 236.917(a) are to be kept. Paragraph (c)(1) proposes a requirement for all railroads to maintain records for results of tests conducted when a processor-based signal or train control system is installed or modified. These records must be retained for the life cycle of the equipment. FRA feels tracking modifications to processor-based equipment is necessary, because such changes, especially those concerning software, are not often readily apparent, yet may lead to hazardous conditions. Whenever processor-based equipment or software is modified or revised, it must be tested to ensure it is still functioning as intended. FRA believes these records will also provide valuable information to the railroad and manufacturer pertaining to the reliability of the equipment.

Paragraph (c)(2) deals with maintenance and repair records. For the following two reasons, the Standards Task Force recommended that these records be kept for one year, or until the next record is made. First, a subset of these records (those involving hazardous events) will be tracked in the product's hazard log (see § 236.907(a)(6)). Second, many repairs to signal and train control equipment are not performed by the railroad, but rather by contractors. It would be burdensome for repair records to be tracked by the railroad for the lifetime of the product when different contractors might be performing the actual repair work over the product's lifetime. Thus, a requirement for lifetime record retention of test records pertaining to product repairs would be substantially duplicative and burdensome. However, the Task Force noted that PSPs should address issues of railroad signal employee access to repair records and hazard logs for products used throughout the railroad, as these may contain important information for performance of their duties.

Paragraph (d) simply restates a current requirement of § 236.110 (fifth sentence).

Paragraph (e) proposes to allow electronic recordkeeping in lieu of preprinted paper forms.

Section 236.787a. Railroad

FRA proposes this definition to aid in standardizing the application provisions of its regulations. *See* also 49 CFR 238.5.

Section 236.901 Purpose and Scope

This section describes both the purpose and the scope of subpart H.

Section 236.903 Definitions

The term ''component'' is intended to signify an identifiable part of a larger program or construction. A component usually provides a particular function or group of related functions. By proposing such a definition, FRA does not intend to overburden railroads or suppliers by requiring safety performance data and analysis on the least significant of these identifiable parts. Rather, FRA encourages railroads to take advantage of supplier data, which is normally readily available for off-the-shelf components. FRA assumes that railroads and suppliers will use discretion to appropriately define components at levels not quite as simple as a resistor, but also not quite so complex that they could not be readily replaced. For instance, FRA envisions components defined no more specifically than at the printed circuit board level, or E–PROM level.

The term ''executive software'' is intended to encompass that software which affects the overall structure of a signal or train control system and the nature of the interfaces between its various subsystems and components. Executive software remains the same from installation to installation; the design is not changed and it is not recompiled.

The term ''full automatic operation'' is defined per recommendation from the Standards Task Force. This definition was crafted with respect to the railroad industry, which involves both freight and passenger operations. Other definitions come from the transit industry and involve such nuances as door control. The definition captures the notion that locomotive engineers/operators may act as both passive monitors and active controllers in an full automatic operating mode.

This proposed rule is not designed to address all of the various safety issues which would accompany full automatic operation. Indeed, FRA would anticipate the need for further rulemaking to address the wide range of issues that would be presented should automatic operation be seriously contemplated. However, insofar as skills maintenance of the operator is concerned, the proposed rule offers standards in § 236.927.

The term ''human factors'' refers to the limitations in human performance, abilities, and characteristics that designers should consider when designing subpart H products. FRA believes that designers can improve the safety of products by considering human factors as early as possible in the design process. Design that does not account for human factors, however, can degrade safety.

The term ''human-machine interface'' refers to the way an operator interacts with the product. FRA feels designers who incorporate human factors design principles in a human-machine interface can increase system safety and performance.

The term ''Mean Time To Hazardous Event'' is used to capture the parameter widely accepted in the safety/reliability engineering discipline as a scientifically-based prediction of the measure of time likely to pass before the occurrence of a hazardous event. Railroads have indicated objection to the use of the term ''average'' or ''expected'' in the definition of MTTHE. FRA invites comments addressing this issue specifically.

The term ''new or next-generation train control system'' is intended to capture the notion of a train control system utilizing a relatively new technology or new generation of technology, not currently in use in revenue service. Under this definition, a significant change in the way signal and train control systems work, such as that brought about by Locomotive Speed Limiter (LSL), could be trigger classification as a new or next-generation train control system. Other factors, such as the relative maturity of the product brought to market, may be relevant to this determination.

The term ''predefined change'' is intended to signify any change likely to have an effect on the risk assessment for the product. FRA imagines that predefined changes will include: additions, removals, or other changes in hardware, software, or firmware to safety-critical products, application software, or physical configuration description data, under circumstances capable of being anticipated when the initial PSP is developed. FRA is considering amending the definition of predefined change to includes both

changes made directly to the product and changes to how the product is used. FRA urges parties developing product PSPs to consider all likely configurations for the product, and include such considerations in the risk assessment. This will reduce the likelihood of being required to file a PSP amendment at a later date when the railroad wishes to slightly reconfigure their product or make a slight change to it.

The term ''preliminary hazard analysis'' is intended to signify the process used to develop a comprehensive listing of all safety-enhancing or safety-preserving functions which safety-critical products will perform. This listing should address the requirements currently used to provide for safety of train movements in the Rules, Standards & Instructions (RS&I) (part 236). It should also be consistent with those requirements derived from laws of physics, such as minimum required braking distances, and provide guidance as to how such requirements should be met.

The term ''product'' is proposed to encompass all signal or train control equipment which is processor-based, including: (i) A processor-based component of a signal or train control system, and (ii) a processor-based subsystem of a signal or train control system, or the system itself, if processor-based. A processor-based subsystem is intended to signify a signal or train control system's subsystem which contains a processor-based component. A processor-based signal or train control system is intended to mean a signal or train control system which contains a processor-based component.

For issues related to the definition of ''risk assessment,'' please see major issue (c)-Risk Assessment Methods.

The term ''safety-critical'' is intended to apply to any function which must be correctly performed in order to avoid causing a hazardous condition to equipment or personnel. If not performing correctly, a safety-critical system, subsystem, or component could cause a hazardous condition or permit the occurrence of a hazardous condition which it was designed to prevent. An example of the latter would be an ''overlay'' system that does not constitute any part of the method of operation, but maintains safe system operation should any one of the safety-critical functions be omitted or not performed correctly (e.g., human error).

The term ''subsystem'' is intended to mean, for purposes of this rule, any defined portion of a system. Subsystems will normally have distinct functions, and may be constitute systems themselves.

The term ''system'' is intended to mean a composite of people, procedures and equipment which are integrated to control signals or train movement within a railroad. (Adapted from Roland, Harold E. and Moriarty, Brian, ''System Safety Engineering and Management,'' Second Edition, John Wiley and Sons, Inc., 1990, p. 6.)

The term ''system safety precedence'' is intended to capture the concept of a priority of means for hazard elimination or mitigation, as stated in Military Standard 882C, ''System Safety Program Requirements'' (U.S. Department of Defense; January 18, 1993).

The term ''validation'' is slightly modified from the IEEE definition to incorporate the notion that validation procedures do not end with the end of the development cycle. Validation can be performed at any stage of a product's life cycle, including and especially after modifications are made to it. One supplier indicated that this proposed definition ought to be modified to exclude references to what stages in a product's life cycle validation is performed. Commenters are invited to address this issue specifically.

Section 236.905 Railroad Safety Program Plan (RSPP)

The system approach to safety is used pervasively in a variety of industries to reduce the risk of accidents and injuries. FRA has discussed the need for this approach to safety in three recent rulemakings: FOX High Speed Rail Safety Standards, 62 FR 65478, Dec. 12, 1997; Passenger Train Emergency Preparedness, 63 FR 24630, May 4, 1998; and Passenger Equipment Safety Standards, 64 FR 25540, May 12, 1999. System safety means the application of design, operating, technical, and management techniques and principles throughout the life cycle of a system to reduce hazards and unsafe conditions to the lowest level possible, through the most effective use of available resources. The system safety approach requires an organization to identify and evaluate safety hazards that exist in any portion of the organization's ''system,'' including those caused by interrelationships between various subsystems or components of that system. The organization then creates a plan designed to eliminate or mitigate those hazards. Where possible, the development of a system safety plan precedes the design, implementation, and operation of the system, so that potential risks are eliminated at the earliest possible opportunity. System safety plans are viewed as living documents, which should be updated as circumstances or safety priorities change or new information becomes available.

This section proposes that railroads implement FRA-approved system safety plans, enforce them, and update them as necessary. In this process, FRA proposes that the railroad implement their RSPP to identify and manage safety risks, and generate data for use in making safety decisions. Based on the philosophy of system safety planning, FRA believes that initiating this process prior to design and implementation of products covered by subpart H is necessary for development of safety-critical processor-based signal and train control systems.

Paragraph (a) would require the railroad to adopt an RSPP. FRA envisions that the RSPP will be a living document that evolves as new information and knowledge become available. Due to the critical role that the RSPP plays in this proposed rule, FRA proposes that the railroad submit their initial plan for FRA review and approval prior to implementation of safety-critical products. Since the development of many safety-critical features in products will be guided by the RSPP, FRA believes that its review and approval is essential. FRA feels this role is a logical and necessary outgrowth of its responsibility to promulgate clear, enforceable, and effective safety standards. This paragraph also requires the railroad to submit their initial RSPP to FRA. FRA believes that the RSPP must be used as a guide in the earliest conceptual stages of a project.

Paragraph (b) proposes that the RSPP address minimum requirements for development of products. It provides minimum requirements which the RSPP must address. FRA intends the plan to be a formal step-by-step process which covers: identification of all safety requirements that govern the operation of a system; evaluation of the total system to identify known or potential safety hazards that may arise over the life cycle of the system; identification of all safety issues during the design phase of the process; elimination or reduction of the risk posed by the hazards identified; resolution of safety issues presented; development of a process to track progress; and development of a program of testing and analysis to demonstrate that safety requirements are met. These minimum requirements are addressed in paragraphs (b)(1) through (b)(4).

Paragraph (b)(1) proposes a requirement that the RSPP provide a detailed description of the tasks to be completed during the preliminary hazard analysis for every safety-critical

product developed for use on the railroad. Paragraphs (b)(1)(i) through (b)(1)(iv) list several types of tasks which must be included in the RSPP. Railroads have indicated that requirement (iv), the identification of the safety assessment process, appears to duplicate (ii), the complete description of risk assessment procedures. FRA intends the risk assessment to be a measurement tool, used to benchmark safety levels and hopefully to provide valuable safety insight to designers. FRA views the safety assessment process as a more comprehensive process in which design for safety concerns are effectively identified and addressed at all stages of product development. FRA welcomes further comments concerning the railroad's claim and this distinction.

Paragraph (b)(2) discusses how the RSPP identifies validation and verification methods for the initial design/development process and future changes, including any standards to be complied with in the validation and verification process. The objective is that railroad create and maintain documentation which will facilitate an independent third party assessment, if required (see § 236.915(h)). FRA believes this process will also help to refine and standardize validation and verification processes for each railroad.

Paragraph (b)(3) proposes a requirement that the RSPP contain a description of the process used during product development to identify and consider the human-machine interfaces (HMIs) which affect safety. The proposed requirements set forth in this paragraph and in appendix E attempt to mandate design consideration of, among other concerns, sound ergonomic design practices for cab layout in order to minimize the risk of human error, attention loss, and operator fatigue. FRA believes it is necessary for railroads/product manufacturers to be able to demonstrate how their human factors design requirements are developed and that they are developed at an early stage in the product development process.

Paragraph (b)(4) discusses how the RSPP identifies configuration management requirements for the configuration of products subject to subpart H. The Standards Task Force felt this requirement was necessary to help railroads maintain consistency in the configuration management of the products they use.

Paragraph (c) describes the proposed initial review and approval procedures FRA will utilize when considering each railroad's RSPP. Paragraph (c)(1) indicates that the petition must be delivered to the Docket Clerk, Office of Chief Counsel, for action by the FRA Associate Administrator for Safety. Paragraph (c)(2) establishes the timing of the petition process. FRA normally responds in some fashion within 180 days with one of the responses listed (grant the petition, deny the petition, or request additional information). However, there may be circumstances in which FRA is unable to respond as planned. Consequently, paragraph (c)(3) indicates that inaction by FRA within the 180-day period means the petition will remain pending. The petition is not approved until the railroad receives an affirmative grant from FRA. Railroad members of the Standards Task Force suggested that FRA should notify them if an extension to the 180-day period will be needed, and provide the reasons therefore. FRA invites comments addressing FRA's handling of RSPP petitions beyond 180 days after filing. Paragraph (c)(4) proposes that FRA be able to reopen consideration for any previously-approved petition for cause. This will help ensure that FRA has the ability to preempt problems erupting as a result of widely disparate safety priorities being implemented throughout the industry.

Paragraph (d) proposes requirements for how and when RSPPs can be modified. First, FRA believes railroads can and should modify their RSPPs at any time. However, when RSPP modifications related to safety-critical PSP requirements are involved, FRA feels its approval is necessary. Paragraph (d)(1) proposes a requirement that railroads obtain FRA approval in these cases. In any other case, the railroad would be able to implement the modification without FRA approval. Paragraph (d)(2) proposes that procedures for obtaining FRA approval of RSPP modifications are the same for those used to obtain initial FRA approval, with the added requirements that the petition identify the proposed modifications, the reason for the modifications, and the effect of the modifications on safety. FRA notes that it may not be necessary to remit copies of the entire RSPP.

Section 236.907 Product Safety Plan (PSP)

This section describes the contents of the Product Safety Plan (PSP) that must be developed to govern each product. The provisions of this section require each PSP to include all the elements and practices listed in this section to assure these products are developed consistent with generally-accepted principles and risk-oriented proof of safety methods surrounding this technology. Further, each PSP must include acceptable procedures for the implementation, testing, and maintenance of the product.

FRA's existing regulations covering signal and train control systems do not include requirements of such detail since they are based on minimum design standards of long standing application that are recognized as appropriate to achieve the expected level of performance. As a result of the industry's desire to move to ''performance-based standards'' for signal and train control systems, FRA believes it is necessary to include the provisions contained in this section in order to assure safety of railroad employees, the public, and the movement of trains. In addition, FRA must ensure that key elements in the development of products correlate with the concepts of proven standards for existing signal and train control systems. FRA seeks comments on whether the elements contained in this section are adequate or whether there are other requirements that should be included to assure safety.

Paragraph (a)(1) would require the PSP include system specifications that describe the overall product and identify each component and its physical relationship in the system. FRA will not dictate a specific product architecture but will examine each to fully understand how various parts relate to one another within a system. Safety-critical functions in particular will be reviewed to determine whether they are designed on the failsafe principle. FRA believes this provision is an important element that can be applied to determine whether safety is maximized and maintainability can be achieved. Railroads have expressed concern over the level of detail required in describing the product. Commenters are invited to address this issue.

Paragraph (a)(2) would require a description of the operation where the product will be used. FRA is essentially attempting to determine the type of operation on which the product is designed to be used. One signal system supplier noted that this paragraph may not be applicable to products which are independent of some or all of the railroad operation characteristics described in this paragraph. FRA invites comments addressing this issue.

Paragraph (a)(3) requires the PSP to include a concepts of operations document containing a description of the product functional characteristics and how various components within the system are controlled. FRA believes that this provision along with that contained in paragraph (a)(1) above will assist in a thorough understanding of the

product. FRA will use this information to review the product for completeness of design for safety by comparing the functionalities with those contained in standards for existing signal and train control systems. While FRA will not prescribe standards for product design, FRA would require that the applicant compare the concepts contained in existing standards to the operational concepts, functionalities, and control contemplated for the product. For example, FRA requirements prescribe that where a track relay is de-energized, a switch or derail is improperly lined, a rail is removed, or a control circuit is opened, each signal governing movements into a block occupied by a train, locomotive, or car must display its most restrictive aspect for the safety of train operations. FRA intends to apply the same concept, among others, when reviewing PSPs to assure such minimum safety requirements exist.

Paragraph (a)(4) proposes that the PSP include a safety requirements document that identifies and describes each safety-critical function of the product. FRA intends to use this information to determine that appropriate safety concepts have been incorporated into the proposed product. For example, existing regulations require that when a route has been cleared for a train movement it cannot be changed until the governing signal has been caused to display its most restrictive indication and a predetermined time interval has expired where time locking is used or where a train is in approach to the location where approach locking is used. FRA will apply this concept, among others, to determine whether all the safety-critical functions are included. Where such functionalities are not clearly determined to exist as a result of technology development, FRA will expect the reasoning to be stated and justification provided how that technology provides equivalent or greater safety. Where FRA identifies a void in safety-critical functions, FRA will expect remedial action prior to use of the system. Interested parties are asked to comment on the adequacy of this process for preserving railroad safety.

Paragraph (a)(5) would require the PSP to contain a document demonstrating that the product architecture satisfies the safety requirements. The product architecture is expected to cover both hardware and software aspects which identify the protection developed against random hardware faults and systematic errors. Further, the document should identify the extent to which the architecture is fault tolerant. This provision may be included in the requirements of paragraph (a)(1).

Paragraph (a)(6) proposes that a hazard log be included in the PSP. This log consists of a comprehensive description of all hazards to be addressed during the life cycle of the product, including maximum threshold limits for each hazard (for unidentified hazards, the threshold shall be exceeded at one occurrence). The hazard log addresses safety-relevant hazards, or incidents/failures which affect the safety and risk assumptions of the product. Safety-relevant hazards include events such as false proceed signal indications and false restrictive signal indications. If false restrictive signal indications happen on any type of frequency, they could cause train crew members or other users (roadway workers, dispatchers, etc.) to develop a lackadaisical attitude towards complying with signal indications or instructions from the product, creating human factors problems. Incidents in which stop indications are inappropriately displayed may also necessitate sudden brake applications that may involve risk of derailment due to in-train forces. Other unsafe or wrong-side failures which affect the safety of the product will be recorded on the hazard log. The intent of this paragraph is to identify all possible safety-relevant hazards which would have a negative effect on the safety of the product. Right-side failures, or product failures which have no adverse effect on the safety the product (i.e., do not result in a hazard) would not be required to be recorded on the hazard log.

Paragraph (a)(7) would require that a risk assessment be included in the PSP. See major issue (c)-Risk Assessment Methods. FRA will use this information as a basis to confirm compliance with the minimum performance standard.

Paragraph (a)(8) proposes that a hazard mitigation analysis be included in the PSP. The hazard mitigation analysis must identify the techniques used to investigate the consequences of various hazards and list all hazards addressed in the system hardware and software including failure mode, possible cause, effect of failure, and remedial actions. A safety-critical system must satisfy certain specific safety requirements. Leveson, Nancy G., ''Safeware: System Safety and Computers,'' Addison-Wesley Publishing Company, 1995. To determine if these requirements are satisfied, the safety assessor must review and assess the results of the following tasks:

1. Hazards associated with the system have been comprehensively identified.
2. Hazards have been appropriately categorized according to risk (likelihood and severity).
3. Appropriate techniques for mitigating the hazards have been identified.
4. Hazard mitigation techniques have been effectively applied.

FRA does not expect that the safety assessment will prove absolutely that a product is safe. However, the safety assessment should provide evidence that risks associated with the product have been carefully considered and that steps have been taken to eliminate or mitigate them. Hazards associated with product use need to be identified, with particular focus on those hazards found to be have significant safety effects. Then, the designer must take steps to remove them or mitigate their effects. Hazard analysis methods are employed to identify, eliminate and mitigate hazards. Under certain circumstances, these methods will be required to be reviewed by an independent third party for FRA approval.

Paragraph (a)(9) would also require that the PSP address safety verification and validation procedures. FRA believes verification and validation for safety are vital parts of the development of products and, in certain cases, should be performed by a third party. Verification and validation requires forward planning and, consequently, the PSP should identify the test planning at each stage of development and the levels of rigor applied during the testing process. FRA will use this information to assure the adequacy and coverage of the tests are appropriate.

Paragraph (a)(10) would require the PSP to include the results of the safety assessment process by analysis that identifies each potential hazard and an evaluation of the events leading to the hazard; identification of safety-critical subsystems; the safety integrity level of each safety-critical subsystem; design of each safety-critical subsystem; results of a safety integrity analysis to assess the safety integrity level achieved by the safety-critical subsystems; and ensure from the analysis that the safety integrity levels have been achieved. FRA expects the safety assessment process to be clearly stated and thorough according to the complexity of the product. FRA realizes that paragraphs (a)(9) and (a)(10) may overlap in terms of requirements, and is considering consolidation of the concepts required in these two paragraphs.

Paragraph (a)(11) would require a human factors analysis which addresses

all human-machine interfaces (HMI's) and all product functions to be performed by humans to enhance or preserve safety. FRA expects this analysis to place special emphasis on human factors coverage of safety-critical hazards including the consequences of human failure to perform. Each HMI is to be addressed including the basis of assumptions used for selecting each such interface, its effect upon safety and identification of potential hazards associated with each interface. Where more than one employee is expected to perform duties dependent upon the output of, or input to, the HMI, the analysis must address the consequences of human failure to perform singly or in multiple. FRA uses this information to determine the HMI's effect upon the safety of railroad operations. The human factors analysis must address all criteria listed in Appendix E, unless approval is obtained from the Associate Administrator for Safety to use other equally suitable criteria. The Standards Task Force felt this flexibility is necessary for designers to have.

Paragraph (a)(12) would require the railroad to include in its PSP the training, qualification, and designation program for workers who perform inspection, testing, and maintenance tasks involving the product. FRA believes many benefits accrue from the investment in comprehensive training programs which, among other things, are fundamental to creating a safe workforce. Effective training programs can result in fewer instances of human casualties and defective equipment, leading to increased operating efficiencies, less troubleshooting, and decreased costs. FRA expects any training program to include employees, supervisors and contractors engaged in railroad operations, installation, repair, modification, testing, or maintenance of equipment and structures associated with the product.

Paragraph (a)(13) would require the PSP to identify specific procedures and test equipment necessary to ensure the safe operation, installation, repair, modification and testing of the product. Requirements for operation of the system must be succinct in every respect. The procedures must be specific about the methodology to be employed for each test to be performed that is required for installation, repair, or modification including documenting the results thereof. FRA will review and compare the repair and test procedures for adequacy against existing similar requirements prescribed for signal and train control systems. FRA will use this information to ascertain the product will be properly installed, maintained and tested.

Paragraph (a)(14) provides that products may be so designed that existing requirements contained in part 236, subparts A, B, C, D, E, and F are not applicable. In this event, the PSP must identify each pertinent requirement considered to be inapplicable, fully describe the alternative method used that equates to that requirement and explain how the alternative method fulfills or exceeds the provisions of the requirement. FRA notes that certain sections of part 236 may always be applicable to subpart H products. For example, § 236.0 prescribes, among other requirements, the conditions and speeds for which block signal systems and automatic cab signal, train stop, and train control systems must be installed. These are benchmark safety levels related to operational considerations against which the safety performance of innovative newer systems will be compared. Further, FRA will determine whether the product fully embodies the concepts of proven standards for existing signal and train control systems, as captured by subparts A–G of part 236.

Paragraph (a)(15) would require the PSP to include a description of the security measures necessary to meet the specifications for each product. Security is an important element in the design and development of products and covers issues such as developing measures to prevent hackers from gaining access to software and developing measures to preclude sudden system shutdown. The description should identify the formal method used in development of the system software, identify each hazard and its consequence in event of failure that was mitigated by using the formal method, and indicate the results of the formal proofs of correctness of the design. Where two or more subsystems or components within a system have differing specifications, the description should address the safety measures for each subsystem or component and how the correctness of the relationships between the different specifications were verified. Where two formal methods are used in developing safety-critical software from the same specification, the description should explain why the more rigorous method was not used throughout development process and the effect on the design and implementation.

Paragraph (a)(16) would require warnings to ensure safety be addressed in the Operations and Maintenance Manual and warning labels placed on the equipment of each product as necessary. Such warnings include, but are not limited to, means to prevent unauthorized access to the system; warnings of electrical shock hazards; cautionary notices opposing improper usage, testing or operation; and configuration management of memory and databases. The PSP should provide an explanation justifying each such warning and an explanation of why there are no alternatives that would mitigate or eliminate the hazard for which the warning is placed.

Paragraph (a)(17) would require the railroad to develop comprehensive plans and procedures for product implementation. Implementation (validation or cutover) procedures must be prepared in detail and identify the processes necessary to verify the product is properly installed and documented, including measures to provide for the safety of train operations during installation. FRA will use this information to ascertain the product will be properly installed, maintained and tested.

Paragraph (a)(18)(i) would require the railroad to provide a complete description of the particulars concerning measures required to assure products, once implemented, continue to provide the expected safety level without degradation or variation over their life cycles. The measures must be specific regarding prescribed intervals and criteria for testing, scheduled preventive maintenance requirements, procedures for configuration management, modifications, and repair, replacement and adjustment of equipment. FRA intends to use this information, among other data, to monitor the product to assure it continues to function as intended.

Paragraph (a)(18)(ii) discusses a PSP requirement to include a description of each record concerning safe operation. Recordkeeping requirements for each product are discussed in § 236.917.

Paragraph (a)(19) proposes a requirement that the PSP include a description of all backup methods of operation and safety critical assumptions regarding availability of the product. FRA believes this information is essential for making determinations about the safety of a product and both the immediate and long-term effect of its failure. Railroads have indicated concern that product availability is not in itself a safety function, and that therefore this requirement may be too broad. FRA suggests that availability is directly related to safety to the extent the backup means of controlling operations involves greater risk (either inherently

or because it is infrequently practiced) and invites comments addressing this issue.

Paragraph (b) discusses predefined changes. PSPs should identify the various configurable applications of the product, since this rule mandates use of the product only in the manner described in its PSP (see § 236.915(d)). FRA recognizes that railroads' rights-of-way vary with regard to the number of tracks and layouts of interlockings, junctions and stations over which train movements are made at various speeds and density. Products may contain identical subsystems or components having configurable features to provide the capability of controlling a variety of track layout schemes. The PSP must clearly set forth those attributes in such equipment that may be employed or expunged without degradation or variation of safety over the life cycle of the system, as well as the impact such changes may have in the risk assessment. Satisfaction of the minimum performance standard must be demonstrated for each predefined change. Also, the PSP must fully describe the procedures to be followed for each change and the inspections and tests necessary to assure the system functions as intended.

Paragraph (c) discusses incremental and maintenance changes. The term ''incremental change'' is intended to capture the concept of planned version changes to a product, usually software-type changes. FRA believes these changes will be necessary in order for products to acquire capabilities to perform added functions as safety requirements change. The goal of this paragraph is to encourage as many subsequent product changes as possible to be considered by initial designers during the product development stage, in order to avoid, to the extent possible, changes made by persons with no link to initial safety design considerations.

Section 236.909 Minimum Performance Standard

FRA has attempted to craft a substantive standard which is performance-based rather than prescriptive. In short, FRA desires to establish what level of performance must be achieved, but not how it must be achieved. The objective of the minimum performance standard FRA proposes is simple: new processor-based signal and train control systems must be at least as safe as the systems they would replace. The challenge inherent in this performance-based standard is measuring performance levels. For FRA, this challenge becomes one of being able to confirm compliance.

Paragraph (a) proposes the performance standard for all products to be covered by this rule. The railroad must establish with a high degree of confidence through its safety analysis that introduction of the system will not result in a safety risk level that exceeds the level of safety risk in the previous condition. In short the railroad must prove that safety is not degraded. This proposed standard places the burden on the railroad to demonstrate that the safety analysis provides a high degree of confidence. Under the proposed regulatory scheme, FRA will have access to the railroads' analyses, and will remain as likely to detect obvious shortcomings in them.

FRA is considering moving the second clause of the last sentence of paragraph (a), which requires the railroads to make available the necessary analyses and documentation. This requirement may be moved for organizational purposes to a more specific section in the proposed rule.

Paragraph (b) indicates that FRA would rely on the factors listed in § 236.915(g)(2) when assessing whether the petitioner made has met the performance standard for the product through employment of sufficient safety analysis. ''FRA review of PSP'' is intended to apply to both FRA review of petitions for approval and FRA review of informational filings, which, for good cause, are treated as petitions for approval. Railroads have indicated concern that this proposal does not provide for an administrative appeals procedure. FRA believes that determinations under this subpart should be made at the technical level, rather than the policy level, due to the complex and sometimes esoteric subject matter. FRA invites comments specifically addressing this issue.

Paragraphs (c) and (d) propose standards for the scope of the risk assessment to be conducted. Unless criteria for an abbreviated risk assessment are met, a full risk assessment would be required for each product.

Paragraph (c) describes the proposed scope for a full risk assessment. The Standards Task Force desired to clearly define the scope of the risk assessment by addressing only risks relevant to safety of the product. Thus, they decided that only affected risks need be addressed. Take, for instance, the risk of injury due to a broken handhold on a freight car. It is obvious that this risk would not be affected by implementation of a new signal and train control system, and therefore need not be included in the risk assessment. However, any risk which is affected by introduction, modification, replacement or enhancement of the product must be accounted for. The proposed standard further explains that these risks can be broken down into three categories to include: new risks, eliminated risks, and risks neither new nor eliminated whose nature (probability of occurrence or severity) has changed. FRA understands that many of the affected risks relate to very low probability events with severe consequences. These risks might be overwhelmed if analyzed in combination with other, more probable risks, which would not be affected by the change.

Paragraph (d) proposes a simpler approach to demonstrate compliance with the performance standard for less complex changes such as replacement of certain signal and train control system components. The Standards Task Force recommended allowing for this simpler approach when the type of change is sufficiently basic. This proposed class of changes is defined as one which does not introduce any new hazards into the railroad operation (that is, different from the previous method of operation) and which maintains the same (or less) levels of risk exposure and severity for hazards associated with the previous condition. The Standards Task Force felt comfortable with this distinction since no new hazards are introduced with introduction of the product, and hazards which were present in the original operation are sufficiently contained (not increased in severity or exposure thereto). An example of this type of change would be replacement of a component in a signal and train control system with a newer-generation processor-based component which performs the same function. No new hazards would likely be introduced that weren't already there, original hazards would not be subject to higher exposure, and original hazards would not be subject to an increase in severity. Unless introduction of the new product is accompanied by changes in operation, the hazards encountered by the new product (which will normally be a component of the system) would be identical in both severity and exposure.

For changes analyzed using this simplified analysis, risk associated with operation under the new product is assumed to be proportional to its Mean Time to Hazardous Event (MTTHE). Therefore, changes in risk are assumed to be proportional to changes in MTTHE. The Standards Task Force proposed this simplified approach based on the principle that when risk severity and risk exposure remain constant, risk is directly proportional to the probability of a hazardous event

occurring. This is demonstrated by the equation:

$risk_h = probability_h * severity_h$

which, in basic terms, states that the risk of a hazard occurring is equal to the probability of the hazard occurring multiplied by the severity of the hazard. The product's MTTHE is a convenient indication of hazard probability levels for two reasons. First, suppliers have indicated that MTTHE figures can be made readily available since they are already used by some railroad signal and train control system suppliers of off-the-shelf components used in those systems. Second, MTTHE is inversely related to the hazard probability identified in the equation above.

If in the above equation the hazard severity is kept constant, hazard probability remains directly proportional to the risk. This is true only if the exposure to the risk, which is related primarily to railroad operating practices (i.e., train speeds, train volumes, utilization of product, etc.), remains the same. This way risk associated with operation under the resulting system is directly proportional to the MTTHE of the new product. This condition on risk exposure is necessary since it precludes changes in train volume or other operating practices which may affect the actual safety risk encountered.

Suppliers requested that severity not be locked into place in order to fit into this exception, but also to allow for cases where introduction of the product may bring about a reduction in hazard severity. Although an example might be difficult to imagine, FRA is confident that in such case it is mathematically impossible for safety risk levels to increase.

Under these conditions, the FRA feels MTTHE is a sufficient indication of risk, thereby warranting a simplified risk assessment. The FRA seeks comments on whether this exception from the full rigors of the risk assessment is appropriate, and if not, to what extent the required analysis should become more rigorous as the complexity of the proposed system increases.

Paragraph (e) proposes general principles for the conduct of risk assessments and which methods may be used (see Major Issue (c)—''Risk Assessment Methods'').

Paragraph (e)(2) contains general criteria for each risk calculation. FRA has identified three variables which must be provided with risk calculations: accident frequency, severity, and exposure. Traditionally, risk is defined as the expected frequency of unsafe events multiplied by the expected consequences. FRA feels that exposure should be identified because increases in risk due to increased exposure could be easily distinguished from increases in risk due solely to implementation and use of the proposed product. FRA is primarily interested in risks relevant to use of the proposed product. FRA feels it would be inconsistent policy to insist to a railroad which intends to double its traffic on one rail line that it halve its accident rate if it puts in a new signal or train control system. Conversely, FRA feels a railroad should not be allowed to implement a new signal or train control system which projects double the original accident rate on a line simply because it intends to reduce its traffic volume on that line by one half. A requirement to identify exposure will help define risks relevant to use of the proposed product.

Risk exposure may be indicated by the total number of train miles traveled per year or total passenger miles traveled per year, if passenger operations are involved. FRA believes risk to operations involving passengers is highly relevant, since advanced train control technology will most certainly find uses on such lines. NTSB has specifically recommended application of advanced train control technology to lines with passenger traffic. NTSB/Railroad Accident Report-93/01. FRA believes any change should not adversely affect the safety of passenger operations. However, a risk assessment method which does not account separately for passenger miles could, in theory, obscure an increase in risk for passengers that was offset by a reduction in freight-related damages.

In earlier drafts the FRA had proposed to the Standards Task Force that risk measurements be adjusted for exposure in units of train-miles per year, passenger miles per year or ton-miles per year, but that the units not be mandated in the rule. Since most freight railroads keep safety data in terms of train-miles and gross train-miles for each railroad must be reported to FRA under part 225, FRA does not believe many railroads will burden themselves additionally by maintaining other data for purposes of this requirement.

The FRA seeks comment on this proposed requirement to account for exposure in the units mentioned above, specifically regarding the appropriateness of this approach and other possible approaches.

Paragraph (e)(2) also covers a proposed requirement for risk severity measurements. FRA proposes to allow railroads to measure risk severity either in terms of total accident costs, including property damage, injuries and fatalities, or in simpler terms of expected fatalities only. FRA proposes the two alternatives in order to allow flexibility, and to permit the railroads to avoid metrics which could be misconstrued as trading dollars for lives, when in fact they would be more comprehensive in avoiding accident consequences.

FRA wishes to make clear that the sole purpose of the risk assessment in this proposed rule is to require railroads to produce certain safety risk data which will allow the agency to make informed decisions concerning projected safety costs and benefits. FRA feels this is a necessary component of the proposed performance standard in order for FRA to be able to effectively carry out its statutory duties as a regulatory agency. By proposing a requirement for a risk assessment, FRA does not intend to create a presumptive amount of damages for tort liability after an accident occurs. In order to help maintain the safety focus of this requirement, FRA proposes an allowance for railroads to use only fatality costs. FRA believes that for the types of safety risks involving signal and train control, total accident costs and total fatalities correspond closely enough to allow an accurate view. Thus FRA believes that allowing the alternative measure would not change substantially the risk assessment.

Paragraph (e)(3) involves the issue of concurrent changes in railroad operations. Railroads intending to implement products covered by subpart H may intend to change operational characteristics at the same time to take advantage of the benefits of the new technology. FRA envisions increased train volumes, passenger volumes, and/or operating speeds to be likely changes to accompany implementation of subpart H products. The proposal would require the railroad to analyze the total change in risk, then separately identify and distinguish risk changes associated with the use of the product itself from risk changes due to changes in operating practices (i.e., risk changes due to increased/decreased operating speed, etc.). FRA believes this procedure will be necessary to make an accurate comparison of the relevant risks for purposes of determining compliance with the minimum performance standard in § 236.909(a).

The second sentence of paragraph (e)(3) concerns changes in operating speeds related to required signal and train control systems for passenger and freight traffic. In such case, the provisions of § 236.0 would normally apply, mandating the use of certain technologies/operating methods. Thus,

for changes to operating speeds, the previous condition calculation must be made according to the assumption that such systems required by § 236.0(c) (and § 236.0(d), if applicable) are in use. This proposed requirement ensures that a minimum level of safety set by § 236.0, which would otherwise normally apply, is respected and not circumvented.

In addition to including an adjustment in the previous condition to account for increases in train speeds as addressed in § 236.0, FRA also intends that an adjustment be made if necessary to take into consideration the need for fluid traffic management. For instance, if the railroad proposed to implement a non-vital overlay train control system in dark territory in connection with major projected increases in traffic, the previous condition would need to be adjusted to assume installation of a traffic control system (which, under the options available under current part 236, would be needed as a practical matter to move the increased numbers of train across the territory). Since research in connection with the Corridor Risk Assessment Model indicates that operations in dark territory have a much higher risk of collision than in signal territory (when normalized on a train mile basis), this adjustment will set the safety baseline at an appropriate level for purpose of making the necessary comparison. Failure to make this adjustment within the previous condition would at least theoretically permit a progressive worsening of the safety situation as new technology is brought on line.

FRA specifically invites comments addressing this method of accounting for concurrent changes in operating practices and comments proposing other methods.

Section 236.911 Exclusions

Paragraph (a) addresses the exclusion from the requirements of subpart H, or grandfathering, of existing products. Railroads employ numerous safety-critical products in their existing signal and train control systems. These existing systems have proven to provide a very high level of safety, reliability, and functionality. FRA believes it would be a tremendous burden on the rail industry to apply this subpart to all existing systems, which have to date proven safe.

Paragraph (b) addresses the products that are designed in accordance with part 236, subparts A through G, not in service at present but which will be in the developmental stage or completely developed prior to the effective date of this subpart. The Standards Task Force felt these products ought to be excluded from the requirements of subpart H upon notification to FRA. FRA agrees that it would be too costly for the railroads and suppliers to redo work and analysis for a product on which development efforts have already begun. Similarly, it would be unfair to subject later implementations of such technology to the requirements of subpart H. In addition, the Standards Task Force felt that railroads ought to be given the option to have products which are excluded made subject to subpart H by submitting a PSP and otherwise complying with subpart H.

Paragraph (c) addresses the exclusion of existing and future deployments of existing office systems technology. Currently, some railroads employ these dispatch systems as part of their existing signal and train control systems. These existing systems have proven to provide a very high level of safety, reliability, and functionality. It would be a tremendous burden on the rail industry to apply subpart H to this proven technology. The Standards Task Force recommended that a subsystem or component of an office system must comply with subpart H if it performs safety-critical functions within a new or next-generation signal and train control system. The Standards Task Force felt this would assure the safe performance of the system.

Paragraph (d) proposes requirements for modifications of excluded products. The Standards Task Force felt that at some point changes to excluded products qualified as significant enough to require the safety assurance processes of subpart H to be followed. This point exists when a change results in degradation of safety or in a material increase in safety-critical functionality.

Paragraph (e) clarifies the application of subparts A through G to products excluded by this section.

Section 236.913 Notification to FRA of PSPs

This section describes the railroad's requirements for notifying FRA of its preparation of a PSP to ensure compliance with procedures established in the RSPP and the requirements of this subpart.

Paragraph (a) proposes a requirement for preparation of a PSP, and discusses the circumstances under which a joint PSP must be prepared. ''Normally subject to joint operations'' is intended to mean any territory over which trains are regularly operated by more than one railroad. FRA does not intend to require a joint PSP for territory over which trains are re-routed on an emergency basis, unless there are other, scheduled trains conducted over this territory by more than one railroad. Railroads have expressed concern that this standard may be too restrictive if it includes any territory over which more than one railroad has operating rights. However, where a railroad has operating rights over a territory where a new train control system will be installed, that railroad's locomotives will need to be appropriately equipped. FRA invites comments specifically addressing this issue.

In paragraph (b), FRA proposes a two-tiered approach where some products require an informational filing, while others will necessitate full FRA review and approval by petition. The railroad must submit a petition for approval only when installation of new or next-generation train control systems is involved. During the course of its deliberations, the Standards Task Force developed a matrix of railroad actions regarding processor-based signal and train control systems and what level of FRA scrutiny ought to be required. Eventually, the group whittled this matrix down to three situations for which the railroad must petition the FRA for approval. These were: (1) Any installation of a new or next-generation train control system; (2) any replacement of an existing PTC system with a new or next-generation train control system, and (3) any replacement of an existing PTC system with an existing PTC system. All other situations would require an informational filing, subject to the procedures proposed in § 236.913(e). The Standards Task Force ultimately recommended that existing processor-based train control systems should be subject to the requirements of proposed § 236.911, so the third situation was no longer considered as subject to petition procedures. Also, since the second situation is a subset of the first, only one situation remains for which a petition for FRA approval is required. FRA agrees with the recommendation, that review and approval is merited for all installations involving new or next-generation train control systems; mere informational filings will not be sufficient in this case. However, FRA invites comments specifically addressing this issue.

In addition, some changes requiring a PSP are most appropriately combined with modifications made in accordance with part 235. Any product change or implementation needs an information filing at a minimum. Paragraph (b) also notes that some issues may be addressed through FRA's waiver process in part 211.

Paragraph (c) proposes procedures for submitting informational filings.

Informational filings are less formal and detailed than full petitions for approval, and FRA will in most instances merely audit to determine whether the railroad has followed the requirements established in its RSPP. Since this process is expected to be less complicated and formal than a full petition for approval review, FRA anticipates being able to respond within 60 days. The railroad must specify where the PSP is physically located since FRA may want to inspect it during normal business hours. This might alleviate any FRA concerns, negating the need for treating the informational filing as a petition for approval. Upon recommendation by the Standards Task Force, FRA has attempted to provide general criteria for situations in which FRA would require an informational filing to be upgraded to a full petition for approval. FRA proposes these filings will be upgraded only for good cause, and gives examples of what would be considered good cause. FRA invites comments specifically addressing these criteria for upgrading of informational filings.

Paragraph (d) discusses proposed requirements for petitions for approval. FRA classifies petitions for approval into two categories: those involving prior FRA consultation (covered in paragraph (d)(1)) and those that do not (covered in paragraph (d)(2)). In this proposed rule, FRA does not require prior consultation but attempts to accommodate railroads' often tight development and implementation schedule by getting involved early. Optimally, FRA feels it should be involved at the system design review phase of development, thereby reducing the scope of FRA review which might otherwise be required. FRA believes that a railroad's failure to involve FRA early enough in the process could potentially delay FRA approval and system implementation, which is often a result of delayed government involvement. This proposed rule invites the railroad to garner government involvement at an early stage in the development of a product requiring a petition for approval or a product change for which a petition for approval is required. Paragraph (d)(1) discusses for petitions for approval involving prior FRA consultation. Under this procedure, FRA issues a letter of preliminary review within 60 days of receiving the Notice of Product Development. This process allows FRA to more easily reach a decision on a petition for approval within 60 days of receipt.

Paragraph (d)(2) discusses petitions for approval which do not involve prior FRA consultation. When railroads wait to involve FRA until they are approaching use of the system in revenue service, paragraph (d)(2)(iii) specifies that the agency will attempt to act on the petition within 180 days of filing. If FRA does not act on the petition, within 180 days it will notify the petitioner as to why the petition remains pending. The Standards Task Force felt that railroads should be encouraged to take necessary safety assurance steps to cure a petition of any apparent inadequacies before FRA requires a third party review.

Paragraph (e)(1) proposes a role for product users in the review process. FRA believes comments from employees who will be working with products covered by this subpart will provide useful safety insight. Accordingly, FRA will consider them to the degree practicable.

Paragraph (e)(2) proposes that FRA provide notice to the public of pending filings and petitions. This method of notice would allow local, national and international labor organizations to get involved with issues of interest. FRA believes that information provided by organizations whose members work directly with or will work directly with products subject to this subpart is important. FRA will consider any information it receives to the degree practicable, when involved in the review of informational filings and petitions for approval.

Paragraph (f) would allow for railroads to file petitions for approval prior to field testing and validation of the product. The petition for approval process must provide information necessary to allow FRA involvement in monitoring of the test program. FRA would encourage railroads to avail themselves of this provision so as to provide FRA with notice of the product development earlier rather than later in the development process.

Paragraph (g) describes the approval process of a PSP. A PSP gains approval when the requirements listed in paragraph (g)(1) have been met.

Paragraph (g)(2) lists the factors which FRA will consider when evaluating the railroad's risk assessment. As the Standards Task Force toiled with this subject it was felt that some guidance or acknowledgment of what factors would be considered by FRA during this process should be spelled out. Paragraph (g)(2)(i) explains FRA will consider the product's compliance with recognized standards in product development. FRA feels the use of recognized standards in system design and safety analyses, accepted methods in risk estimates and proven safety records for proposed products would benefit their ability to act safely, consistently, and in a timely manner on PSP approvals. Paragraph (g)(2)(iii) states FRA will consider as a factor the overall complexity and novelty of the product design. Railroads have indicated this factor appears to be a barrier to innovation. FRA invites comments specifically addressing this topic. Paragraph (g)(2)(vii) lists as a factor whether or not the same risk assessment method was used for both the previous condition and the risk calculation for the proposed product. FRA feels this is important because risk assessment methods vary widely in nature. A common characteristic is their ability to describe relative differences in risk associated with changes in the environment, rather than predicting absolute values for future safety performance. However, railroads have indicated their belief that so long as the methods are acceptable to FRA, it should not matter whether a different one was used. FRA has indicated its position with respect to the choice of risk assessment method in its discussion of entitled ''Major Issues (c)—Risk Assessment Methods.'' FRA specifically invites comments addressing whether factor (vii) ought to be included as a factor either in the PSP approval decision or the decision to recommend a third party assessment.

Paragraph (g)(3) discusses additional factors FRA considers in its decision concerning use of the product by the railroad. Paragraph (g)(4) indicates that FRA is not limited to either granting or denying a petition for approval as is, but rather may approve it with certain conditions. Paragraph (g)(5) includes the proposal that FRA be able to reopen consideration of a petition for cause and sets forth potential reasons for reopening, including such circumstances as credible allegation of error or fraud, assumptions determined to be invalid as a result of in-service experience, or one or more unsafe events calling into question the safety analysis underlying the approval.

Paragraph (h) proposes factors considered by FRA when requiring a third party assessment and who qualifies as an independent third party.

Paragraph (h)(1) lists those factors, as developed by the Standards Task Force, many of which are the same used in deciding whether to approve a PSP. The Standards Task Force developed this list as guidance to product developers for criteria they would be expected to meet to avoid the prospect of a third party assessment.

Paragraph (h)(2) defines the term ''independent third party'' as recommended by the Standards Task

Force. FRA may maintain a roster of recognized technically competent entities, as a service to railroads selecting reviewers under this subpart. Interested parties may submit credentials to the Associate Administrator for Safety for consideration to be included in such a roster. Railroads have indicated concern that the proposed definition is unduly restrictive because it limits independent third parties to ones ''compensated by'' the railroad. FRA believes that requiring the railroad to compensate a third party will heighten the railroad's interest in obtaining a quality analysis and will avoid ambiguous supplier/third party relationships that could indicate possible conflicts of interest. FRA specifically invites comments addressing this issue.

Paragraph (h)(3) notes that the minimum requirements of a third party audit are outlined in Appendix D and that FRA limits the scope of the assessment to areas of the safety validation and verification which deserve scrutiny. This will allow reviewers to focus on areas of greatest safety concern and eliminate any unnecessary expense to the railroad. In order to limit the number of third party assessments, FRA first strives to inform the railroad as to what portions of a submitted PSP could be amended to avoid the necessity and expense of a third party assessment altogether.

Paragraph (i) discusses handling of PSP amendments. The procedures which apply to notifying FRA of initial PSPs also apply to PSP amendments. However, PSP amendments may take effect immediately if they are necessary in order to mitigate risk, and if they affect the safety-critical functionality of the product. The Standards Task Force agreed that a more informal process is warranted in order to alleviate safety concerns which are discovered after FRA is notified of the initial PSP. The Standards Task Force had considered a rule which would allow for all PSP amendments to be handled via informational filing, however, FRA felt the same concerns which apply to initial filing (either as a petition or as an informational filing) should apply to the PSP amendment.

Paragraph (j) discusses procedures for obtaining FRA approval to field test a subpart H product. FRA approval is necessary where the railroad seeks to test any product for which they would otherwise be required to seek a waiver for exemption of specific part 236 regulations. For instance, when field testing of the product will involve direct interface with train crew members, there may be a requirement for some control mechanisms to be in place. Also, railroads will likely need to test products for operational concepts and safety-critical consideration of the product prior to implementation. This paragraph proposes an alternative to the waiver process when only Part 236 regulations are involved. When regulations concerning track safety, grade crossing safety, or operational rules are involved, however, this process would not be available. Such testing may also implicate other safety issues, including adequacy of warning at highway-rail crossings (including part 234 compliance), qualification of passenger equipment (part 238), sufficiency of the track structure to support higher speeds or unbalance, and a variety of other safety issues, not all of which can be anticipated in any special approval procedure. ''Clearing the railroad'' for the test train answers only a portion of these issues. Typically, waiver proceedings under part 211 allow a forum for review of all relevant issues. Based on available options, FRA would foresee the need to continue this approach in the future. Nonetheless, FRA invites comments specifically addressing this issue. Under this paragraph, railroads may also integrate this informational filing with the filing of a petition for approval or informational filing involving a PSP. The information required for this filing, as described in paragraphs (j)(1)–(j)(7), are necessary in order for FRA to make informed decisions regarding the safety of testing operations.

Section 236.915 Implementation and Operation

This section proposes minimum requirements, in addition to those found in the PSP, for product implementation and operation.

Paragraph (a) proposes requirements relating to when products may be implemented and used in revenue service. Paragraph (a)(1) discusses the standard for products which do not require FRA approval, but rather an informational filing. Paragraph (a)(2) addresses the standard for products which require that a petition for approval be submitted to FRA for approval. Paragraph (a)(3) excepts from the requirements of paragraphs (a)(1) and (a)(2) those products for which an informational filing had been filed initially, then FRA elected after implementation to treat its filing as a petition for approval. In the case where FRA chooses to treat an informational filing as a petition for approval after implementation, ''for cause'' is not intended to be restricted to the same interpretation given in § 236.913(c) for ''good cause.'' FRA envisions that cause for review after implementation will more likely be related more to actual in-service performance than initial design safety considerations.

Paragraph (b) proposes a requirement that railroads will not exceed maximum volumes, speeds, or any other parameter limit or provision in the PSP. On the other hand, a PSP could be based upon speed/volume parameters that are broader than the intended initial application, so long as the full range of sensitivity analyses are included in the supporting risk assessment. FRA feels this requirement will help ensure that comprehensive product risk assessments are performed before products are implemented. This paragraph also makes allowance for amendment of PSPs even after implementation. Railroads indicated they will need the ability to amend PSPs to correct initial assumptions after implementation. Furthermore, railroads feel that if operating conditions for which a product was designed are no longer applicable and safety levels have not been reduced, the necessary corresponding PSP amendments should be allowed. FRA invites comments specifically addressing this issue.

Paragraph (c) proposes that each railroad ensure the integrity of a processor-based system not be compromised by prohibiting the normal functioning of such system to be interfered with by testing or otherwise without first taking measures to provide for the safety of train movements, roadway workers, and on-track equipment that depends on the normal functioning of the system. This provision parallels current § 236.4, which applies to all devices. By proposing this paragraph, FRA merely intends to clarify that the standard in current § 236.4 applies to subpart H products.

Paragraph (d) proposes that, in the event of the failure of a component essential to the safety of a processor-based system to perform as intended, the cause be identified and corrective action taken without undue delay. The paragraph also proposes that until repair is completed, the railroad be required to take appropriate measures to assure the safety of train movements, roadway workers, and on-track equipment. This requirement mirrors current requirement § 236.11, which applies to all signal system components.

Paragraph (e) simply intends to convey that the standard in current § 236.11 would apply to subpart H products.

Section 236.917 Retention of Records

Paragraph (a) proposes the documents and records the railroad would be required to maintain at a designated office on the railroad for the life cycle of the product. All documents and records must be available for FRA inspection and copying during normal business hours. First, the railroad would need to maintain adequate documentation to demonstrate that the product PSP meets the safety requirements of the railroad's RSPP and applicable standards in this subpart, including the risk assessment. The risk assessment must contain all initial assumptions for the system that are listed in paragraph (i) of Appendix B—Risk Assessment Criteria. Second, the product Operations and Maintenance Manual, as described in § 236.919, would need to be kept for the life cycle of the product. Third, railroads would be required to maintain training records which designate persons who are qualified under § 236.923(b). These records will be kept until new designations are recorded or for at least one year after such person(s) leave applicable service. Paragraph (a) also would require that implementation, maintenance, inspection, and testing records as described in § 236.907(a)(18)(ii) be recorded as prescribed in § 236.110.

Railroads have indicated that the product life cycle is too long a term to keep the data proving PSP compliance with the railroad's RSPP and training records. FRA is sympathetic to this concern but wishes to ensure that all records relevant to the current configuration and operation of the system remain available. FRA invites comments specifically concerning this issue.

After the product is placed in service, paragraph (b) would require the railroad to maintain a database of safety relevant hazards as described in § 236.907(a)(6), which occur or are discovered on the product. This database information shall be available for inspection and replication by FRA during normal business hours. Paragraph (b) also provides the procedure which must be followed if the frequency of occurrence for a safety-relevant hazard exceeds the threshold value provided in its PSP. This procedure involves taking immediate steps to reduce the frequency of the hazard and report the hazard occurrence to FRA. FRA realizes the scope and difficulty of undertaking these actions could vary dramatically. In some cases, an adequate response could be completed within days. In other cases the total response could take years, even with prompt, deliberate action. If the action were to take a significant time, FRA would expect the railroad to make progress reports to FRA.

The reporting requirement of § 236.917(b) is not intended to preempt current reporting requirements of part 233. In the case of a false proceed signal indication, FRA would not expect the railroad to wait for the frequency of such occurrences to exceed the threshold reporting level assigned in the hazard log. Rather, current § 233.7 requires all such instances to be reported.

FRA notes that the Standards Task Force recommended that railroads take prompt countermeasures to reduce only the frequency of the safety-relevant hazard. There may be situations where reducing the severity of such hazards will suffice for an equivalent reduction in risk. For example, reducing operating speed may not reduce the frequency of certain hazards involving safety-critical products, but it would in most cases reduce the severity of such hazards. FRA invites comments specifically addressing this issue.

Also, railroads have expressed concern that 15 days is not enough time to be held to report any inconsistency to FRA, especially when traditional postal service is used to deliver the report. As such, railroads have proposed that they be given 30 days to report any inconsistencies. FRA is considering an allowance for railroads to fax or e-mail this report, which would relieve concerns about traditional postal service. FRA currently allows faxing or e-mailing of reports required by §§ 233.7 and 234.9, involving signal failure and grade crossing signal system failure, respectively. Commenters are invited to address this issue.

Section 236.919 Operations and Maintenance Manual

This section proposes that each railroad develop a manual covering the requirements for the installation, periodic maintenance and testing, modification, and repair for its processor-based signal and train control systems. The Standards Task Force recognized it was necessary for railroad employees working with safety-critical products in the field to have complete and current information for installation, maintenance, repair, modification, inspection, and testing of the product being worked on. It was also suggested that this information be portable. As a result the Standards Task Force decided that this information be placed in a manual that could easily be carried into the field by the employee for use at the product work site.

Paragraph (a) works with §§ 236.905 and 236.907 and proposes that all specified documentation contained in the PSP necessary for the installation, repair, modification and testing of a product be placed in an Operations and Maintenance Manual for that product and be made available to both persons required to perform such tasks and FRA.

Paragraph (b) proposes that plans necessary for proper maintenance and testing of products be correct, legible, and available where such systems are deployed or maintained. The paragraph also proposes that plans identify the current version of software installed, revisions, and revision dates.

Paragraph (c) proposes that the Operations and Maintenance Manual identify the hardware, software, and firmware revisions in accordance with the configuration management requirements specified in the PSP. This proposed requirement is most easily understood in the context of the requirement for a configuration management control plan as specified in § 236.18.

Paragraph (d) proposes that safety-critical components contained in processor-based systems, including spare equipment, be identified, replaced, handled, and repaired in accordance with the configuration management requirements specified in the PSP.

Section 236.921 Training and qualification program, general

This section sets forth the general requirements for the railroads training and qualification programs related to safety-critical processor-based signal and train control products. This section works in conjunction with § 236.907 which requires the PSP to provide a description of the specific training necessary to ensure the safe installation, implementation, operation, maintenance, repair, inspection, testing, and modification of the product. This section does not restrict the railroad from adopting additional or more stringent training requirements. The training program takes on particular importance with respect to safety-critical processor-based signal and train control products, and in particular, processor-based train control products, because the industry's workforce generally does not have thorough knowledge of the operation of such equipment and appropriate practices for its operation and maintenance. FRA believes employee training and qualification on how to properly and safely perform assigned duties is crucial

to maintain safe railroad equipment and a safe workplace.

FRA believes that many benefits will be gained from the railroads' investment in a comprehensive training program. The quality of inspections will improve, which will result in fewer instances of defective equipment in revenue service and increased operational safety. Under an effective training program: Equipment conditions that require maintenance attention are more likely to be discovered and repairs can be completed safely and efficiently; trouble-shooting will more likely take less time; and maintenance will more likely be completed correctly the first time, resulting in increased safety and decreased costs.

The program will provide training for persons whose duties include inspecting, testing, maintaining or repairing elements of the railroad's safety-critical processor-based signal and train control systems, including central office, wayside, or onboard subsystems. In addition, it will include training required for personnel dispatching and operating trains in territory where advanced train control is in use and roadway workers whose duties require knowledge and understanding of operating rules.

Paragraph (a) proposes the general requirement for when a training program is necessary and who must be trained. Training programs must meet the minimum requirements listed in §§ 236.923 through 236.929, as appropriate, and any more stringent requirements in the PSP for the product.

Paragraph (b) proposes the general requirement that the persons cited in paragraph (a) must be trained to the appropriate degree to ensure that they have the necessary knowledge and skills to effectively complete their duties related to operation and maintenance of products.

Section 236.923 Task Analysis and Basic Requirements

This section sets forth specific parameters for training employees and contractor's employees to assure they have the necessary knowledge and skills to effectively complete their duties as related to safety-critical products and the functioning of advanced train control systems. This section explains that the functions performed by an individual will dictate what type of training that person should receive related to the railroad's processor-based signal and train control system. For example, a person that operates a train would not require training on how to inspect, test, and maintain the system equipment unless they were also assigned to perform those tasks.

The intent of this section is to ensure that employees who work with products, including contractors, know how to keep them operating safely. The proposed rule grants the railroad flexibility to focus and provide training that is needed in order to complete a specific task. However, this proposal is designed to prevent the railroad from using under-trained and unqualified people to perform safety-critical tasks.

This section describes that the training and qualification programs specified in § 236.919 must include a minimum group of identified requirements. These minimum requirements will be described in the PSP. This required training is for railroad employees and contractors' employees to assure they have the necessary knowledge and skills to effectively complete their duties related to processor-based signal and train control systems.

Paragraphs (a)(2) and (a)(3) provide that the railroad will identify inspection, testing, maintenance, repairing, dispatching, and operating tasks for the equipment and develop written procedures for performance of same. Paragraph (a)(4) proposes that the railroad identify additional knowledge and skills above those required for basic job performance necessary to perform each task. Railroads have expressed concern regarding this requirement, and commenters are invited to address this issue.

Paragraph (a)(5) proposes that the railroad develop a training curriculum which includes either classroom, hands-on, or other formally-structured training designed to impart the knowledge and skills necessary to perform each task.

Paragraph (a)(6) proposes that all persons subject to training requirements and their direct supervisors must successfully complete the training curriculum and pass an examination for the tasks for which they are responsible. For example, a person who operates a train would not require training on how to inspect, test, or maintain the equipment unless they were assigned to also perform those tasks. Generally, appropriate training must be given to each of these employees prior to task assignment; however, an employee may be allowed to perform a task for which that person has not received the appropriate training only if they do so under the direct on-site supervision of a qualified person. Direct supervisor is intended to mean the immediate, first-level supervisor to whom the employee reports.

Paragraph (a)(7) proposes that periodic refresher training be conducted at intervals specified in the PSP. This periodic training must include either classroom, hands-on, computer-based training, or other formally-structured training in order that employees and contractors' employees maintain the knowledge and skills necessary to safely perform their assigned tasks. Paragraph (a)(8) proposes a requirement to compare actual and desired success rates for the examination. Railroads have expressed concern about this particular requirement, and commenters are invited to address this issue.

Paragraph (b) conveys that in addition to the training of persons described in paragraph (a), the training program must require that only persons designated as qualified under the railroad's training program will be allowed to perform safety-related inspection, testing, maintenance, repairing, dispatching, or operating tasks. The railroad must maintain records which designate persons who are qualified to perform these tasks per the requirements of this section. These records must be kept until new designations are recorded or for at least one year after such person(s) leave applicable service, and must be available for FRA inspection and copying.

Section 236.925 Training Specific to Control Office Personnel

This section explains the training that must be provided to employees responsible for issuing or communicating mandatory directives. This training must include instructions concerning the interface between computer-aided dispatching systems and processor-based train control systems as applicable to the safe movement of trains and other on-track equipment. In addition, the training must include operating rules that pertain to the train control system, including the provision for moving unequipped trains and trains on which the train control system has failed or been cut out en route.

This section sets forth the requirements of instructions for control of trains and other on-track equipment when the advanced train control system fails. It also includes periodic practical exercises or simulations and operational testing under part 217 to assure that personnel are capable of providing for safe operations under alternative operation methods.

Section 236.927 Training Specific to Locomotive Engineers and Other Operating Personnel

This section proposes minimum training requirements for locomotive engineers and other operating personnel who interact with processor-based train control systems. ''Other operating personnel'' is intended to refer to on-board train and engine crew members (i.e, conductors, brakemen, and assistant engineers). FRA invites comments addressing the issue of whether a formal definition is needed for ''other operating personnel.'' Paragraph (a) requires that the training contain familiarization with the onboard processor-based equipment and the functioning of that equipment as part of a train control system and its relationship to other onboard systems under that person's control. The training program must cover all notifications by the system (i.e. onboard displays) and actions or responses to such notifications required by onboard personnel, as well as how that action or response ensures proper operation of the system and safe operation of the train.

Paragraph (b) notes that with respect to certified locomotive engineers, the training requirements of this section must be integrated into the training requirements of 49 CFR part 240.

Paragraph (c) discusses requirements for use of a train control system to effect full automatic operation, as defined in § 236.903. FRA acknowledges that this proposed rule is not designed to address all of the various safety issues which accompany full automatic operation (although it by no means discourages their development and implementation); however, insofar as skills maintenance of the operator is concerned, the proposed rule offers the standards in this paragraph.

Paragraph (c)(1) proposes the requirement that the PSP must identify all safety hazards to be mitigated by the locomotive engineer.

Paragraph (c)(2) discusses required areas of skills maintenance training. In particular, this requirement recognizes the significance which the Standards Task Force placed on skills maintenance by manual starting and stopping of the train. Although manual starting and stopping, manual operation, and simulation training are all necessary to ensure effective maintenance of skills, the Standards Task Force felt that other options must be available. For instance, it may be burdensome for railroads, especially smaller operations, to offer simulator training to its locomotive engineers/operators. Thus, the Standards Task Force felt that in this instance training requirements can be worked out individually between the railroad, its labor representative and the FRA. In all cases, the PSP must define the appropriate training intervals for these tasks.

Section 236.929 Training Specific to Roadway Workers

This section would require the railroad to incorporate appropriate training in the program of instruction required under part 214 subpart C, Roadway Worker Protection. This training is designed to provide instruction for workers who obtain protection for roadway work groups or themselves and will specifically include instruction to ensure an understanding of the role of a processor-based train control system in establishing protection for workers and their equipment, whether at a work zone or while moving on track between work locations. Also, this section requires that training include recognition of processor-based train control equipment on the wayside and how to avoid interference with its proper functioning.

Appendix B to Part 236—Risk Assessment Criteria

FRA proposes Appendix B as a set of criteria for performing risk assessments for products sought to be implemented on a railroad. During the Standards Task Force deliberations, suppliers indicated concern for flexibility in performing risk assessments. FRA recognizes this concern, yet must balance it against the need for uniformity in the conduct of risk assessments performed under this subpart. This need for uniformity across all products covered by subpart H is necessary when a performance standard is sought to be used. FRA has sought to balance these two seemingly competing concerns by proposing a requirement that the risk assessment criteria be followed, but allowing for other criteria to be used if FRA agrees it is suitable. FRA feels this strategy adequately allows for the flexibility of a performance standard, yet offers concrete guidance on how a railroad or supplier can comply with the standard. As a practical matter, FRA believes that the overwhelming majority of risk assessments will seldom vary widely from the Appendix B criteria. FRA is aware of few known reasonable alternatives, and the criteria themselves are for the most part conventional, common sense methods of achieving the stated objectives.

Paragraph (a) addresses the life-cycle term for purposes of the risk assessment. FRA believes new signal and train control systems will be in place for at least 25 years, based on the life cycles of current systems. Over time, these systems will be modified from their original design. FRA is concerned that subsequent modifications to a product might not conform with the product's original design philosophy. The original designers of products covered by this subpart could likely be unavailable after several years of operation of the product. FRA feels that requiring an assumption of a 25-year life-cycle for products will adequately address this problem. FRA believes this proposed criterion will aid the quality of risk assessments conducted per this subpart by forcing product designers and users to consider long-term effects of operation. However, FRA feels such a criterion would not be applicable if, for instance, the railroad limited the product's term of proposed use. In such case, FRA would only be interested in the projected risks over the projected life-cycle, even if less than 25 years.

Paragraph (a) also addresses the scope of the risk assessment for the risk calculation of the proposed product. The assessment must measure the accumulated residual risk of a train system, after all mitigating measures have been implemented. This means that the risk calculation shall attempt to assess actual safety risks remaining after implementation of the proposed product. FRA is fairly certain that railroads proposing new products will have planned or taken measures to eliminate or mitigate any hazards which remain after the product has been designed. These might include training or warning measures. For the purpose of the risk calculation for proposed product, FRA is only interested in residual risks, or those which remain even after all mitigating measures have been taken.

Paragraph (b) discusses risks concerned with the interaction of product components. Each signal and train control system covered by this subpart is considered to be subject to hazards associated with failure of individual components, as well as hazards associated with improper interaction of those components. FRA is aware that many unanticipated computer system faults have arisen from incomplete analysis of how components will interact. This problem is of vital importance when safety-critical systems are involved, such as those targeted by subpart H.

Paragraph (c) discusses how previous condition is computed. The proposed requirement mandates the identification of each subsystem and component in the previous condition and estimation of an MTTHE value for each of those

subsystems and components. FRA feels the MTTHE is an adequate measure of the reliability and safety of those subsystems and components, and it facilitates the comparison of subsystems and components which are to be substituted on a one-for-one basis (see § 236.909(d)). In some cases, current safety data for the particular territory on which the product is proposed to be implemented may be used to determine MTTHE estimates. The purpose of this provision is to require railroads to produce the basis for any previous condition calculations.

Paragraphs (d) and (e) deal with some types of risks which must be considered when performing the risk assessment. FRA believes that the listed items are relevant to any risk assessment of signal and train control systems and thus ought to be considered. However, there may exist situations when one or more of the categories of risk are not relevant, such as when a system does not involve any wayside subsystems or components. In such case, FRA would obviously not require consideration of such risks, but would expect the risk assessment to briefly explain why.

Paragraph (f)(1) addresses how MTTHE figures are calculated at the subsystem and component level. FRA feels MTTHE should be calculated for each integrated hardware/software subsystem and component. FRA expects that quantitative MTTHE calculation methods will be used where it is appropriate and when sufficient data is available. For factors such as non-processor based systems which are connected to processor-based subsystems, software subsystems/components, and human factors, FRA realizes quantitative MTTHE values may be difficult to assign. In these cases, FRA proposes allowing qualitative values to be used or estimated. Furthermore, for all human-machine interface components/subsystems, FRA proposes appropriate MTTHE estimates be assigned. FRA feels this is necessary because an otherwise reliable product which encourages human errors could result in a dramatic degradation of safety. FRA believes this risk should be identified in the risk assessment.

Paragraph (f)(2) addresses the MTTHE estimates. Under the proposed rule, all MTTHE estimates must be made with a high degree of confidence, and must relate to scientific analysis or expert opinion based on documented qualitative analysis. This paragraph also indicates the railroad must devise a compliance process which ensures that the analysis is valid under actual operating conditions. Since the relevant Standards Task Force recommendation did not provide any criteria as to how such a compliance process would be expected to operate, FRA invites comments addressing this issue.

Paragraph (g) proposes criteria for calculation of MTTHE values for non-processor-based components which are part of a processor-based system or subsystem. FRA believes that it will be common for future systems to combine processor-based components with other components, such as relay-based components. Thus, failures of non-processor-based components must be considered when determining the safety of the total system.

Paragraph (h) proposes a requirement to document all assumptions made for purposes of the risk assessment. FRA does not intend to hold the railroads to directly document these assumptions, but rather to be responsible for their documentation and production if so requested by FRA. FRA imagines that suppliers will in most cases perform the actual documenting task.

Paragraph (h)(1) discusses documentation of assumptions concerning reliability and availability of mechanical, electric, and electronic components. In order to assure FRA that risk assessments will be performed diligently, FRA proposes a requirement for documentation of assumptions. FRA envisions sampling and reviewing fundamental assumptions both prior to a product is implemented and after operation for some time. FRA intends for railroads to confirm the validity of initial risk assessment assumptions by comparing to actual in-service data. FRA is aware that mechanical and electronic component failure rates and times to repair are easily quantified data, and usually are kept as part of the logistical tracking and maintenance management of a railroad.

Paragraph (h)(2) addresses assumptions regarding human performance. Assumptions about human performance should consider all the categories of unsafe acts as described by Reason (1990). Some methods to assess human reliability, such as the Human Cognitive Reliability model (Kumamoto and Henley, 1996, pp. 506–508), assume that unsafe acts of certain types (e.g., lapses and slips) do not occur. Such a method must be supplemented with other methods, such as THERP (Technique for Human Error-Rate Prediction), that are designed to assess these unsafe acts (Kumamoto and Henley, 1996, p. 508). The hazard log required by § 236.907(a)(6) will help determine the appropriateness of the assumptions employed. This database should contain sufficient quantitative detail and narrative text to allow a systematic human factors analysis (examples of procedures to accomplish this can be found in Gertman and Black, 1994, Ch.2) to determine the nature of the unsafe acts involved and their relationship to the deployment of PTC technology, procedures and underlying factors. Thus, FRA does not intend to require railroads to maintain electronic databases solely containing human performance data. However, FRA envisions this requirement will have the effect of railroads maintaining what relevant data they can on human performance. For instance, programs of operational tests and inspections (part 217) will have to be adapted to take into consideration changes in operating rules incident to implementation of new train control systems.

Paragraph (h)(3) discusses risk assessment assumptions pertaining to software defects. FRA believes that projected risks of software failures are difficult to forecast. Therefore, FRA feels it is important to verify that software assumptions are realistic and not overly optimistic.

Paragraph (h)(4) proposes a requirement for the documentation of identified fault paths. Fault paths are key safety risk assumptions. Failing to identify a fault path can have the effect of making a system seem safer on paper than it actually is. However, if an unidentified fault path is discovered in service which leads to an previously unidentified safety-relevant hazard, then the threshold for defects in the PSP is automatically exceeded, and the railroad must take mitigating measures pursuant to proposed § 236.917(b). FRA believes it is possible that railroads will encounter previously unidentified fault paths after product implementation. The frequency of such discoveries would likely be related to the quality of the railroad's safety analysis efforts. Safety analyses of poor quality are more likely to lead to in-service discovery of unidentified fault paths. Some of those paths might lead to potential serious consequences, while others might have less serious consequences. FRA would require the railroads to estimate the consequences of these unidentified faults as if they would continue being detected over the twenty-five year life of the product. Each product would be treated as though it would be in service for twenty-five years from the current date, and unidentified faults would continue to be discovered at the same rate as they had been for the greater of the previous ten years in service or the life of the product. All new products are to be treated as though they had been in service for at least six months in order

to prevent an early-discovered fault path from having drastic impact.

Appendix C to Part 236—Safety Assurance Criteria and Processes

Appendix C sets forth minimum criteria and processes for safety analyses conducted in support of RSPPs and PSPs. The intention of Appendix C is to provide safety guidelines distilled from proven design considerations. These guidelines can be translated into processes designed to ensure the safe performance of the product. The analysis required in Appendix C is designed to minimize failures that would have the potential to affect the safety of railroad operations. FRA recognizes there are limitations as to how much safety can be achieved due to technology limitations, cost, and other constraints, and, upon recommendation from the Standards Task Force, proposes this appendix, recognizing this principle.

Paragraph (a) discusses the purpose of this appendix. Appendix C sets forth minimum criteria and processes for safety analyses conducted in support of RSPPs and PSPs.

Paragraph (b) covers safety considerations and principles which the designer must follow unless the consideration or principle does not apply to the product. In the latter case, the designer is required to state why they believe it does not apply. These safety considerations and principles resulted from early Standards Task Force meetings and are recognized by the industry to be recommended practices for the development of safety-critical systems. FRA believes these proven safety considerations and concepts are a necessary starting point for the development of products under subpart H.

Paragraph (b)(1) discusses design considerations for normal operation of the product. FRA notes that in normal operation, the product should be designed such that human error would not cause a safety hazard. This principle recognizes that safety risks associated with human error cannot be totally eliminated by design, no matter how well-trained and skilled the operators are.

Paragraph (b)(2) addresses design considerations dealing with systematic error. Systematic errors are those that can occur when the product is poorly developed and/or the human-machine interface is not given proper design attention.

Paragraph (b)(3) addresses random failure. FRA recognizes hardware can fail when components fail due to wear and tear, overheating, harsh environmental conditions, etc. This consideration ensures that such hardware failures do not compromise safety.

Paragraph (b)(4) deals with common mode failure. The common mode failures are those that stem from a component failure that can cause other components to fail due to close association among components. These failures are due primarily to poor design practices with respect to interaction among and between components.

Paragraph (b)(5) discusses external influences. FRA notes that external influences need to be taken into account for the safety of the product. Close attention needs to be given to the environment in which the equipment operates.

Paragraph (b)(6) addresses product modifications. In addition to PSP requirements and other relevant requirements of subpart H, close attention needs to be given as to how these modifications affect safety when modifications are made.

Paragraph (b)(7) deals with software design. Software integrity is crucial to the safety of the product. Non-vital (or non-fail-safe) components need to be controlled in such a manner so their failure does not create a hazard. For example, if a semiconductor memory fails, software checks into the semiconductor locations can determine if a potential data corruption has occurred and take appropriate action so that the corrupted data does not constitute a hazard. Hence the importance of software design for the software controlling these types of components.

Paragraph (b)(8) addresses the closed loop principle. Closed loop means that a ''handshake'' in the design will determine whether received data is corrupted or not.

FRA is considering adding a separate paragraph in this appendix specifically to discuss human factors design considerations. Human-centered design principles recognize that machines can only be as effective as the humans who use them. The goals of human factors requirements and concepts in product design are to enhance safety, increase the effectiveness and efficiency of work, and reduce human error, fatigue and stress. Since the implementation of any new system, subsystem or component can directly or indirectly change the nature of tasks that humans perform, both negative and positive consequences of implementation should be considered in design. FRA believes that these principles need to be adequately addressed early in the product development stage rather than at the end of it. Often times, an engineer or evaluator unfamiliar with human factors issues will attempt to address human factors issues as the end of the product development stage nears, at which point only changes in the way the product is implemented are possible (i.e., accommodating changes in operations, additional training, etc.). Thus, FRA envisions compliance with this paragraph to be satisfied with consideration of input from a qualified human factors professional as early as possible in the development process.

Paragraph (c) proposes that certain listed standards be used for verification and validation procedures. These standards are already current industry/consensus standards and are more specifically describe the particular types of products.

Appendix D to Part 236—Independent Review and Assessment of Validation and Verification

Paragraph (a) discusses the purpose of an independent third party assessment of product validation and verification. FRA believes this requirement, as recommended by the Standards Task Force, is necessary for two primary reasons which became apparent through FRA's experience with earlier advanced signal and train control system projects.

By the early 1990's it was evident that technology could be fashioned to end the continuing series of collisions that plagued the railroad industry. The National Transportation Safety Board (NTSB) had studied 50 major rail collision incidents that NTSB determined could have been prevented had a system of positive train separation been in use. NTSB's recommendations for the need of a positive train separation system are given in its accident report titled ''Head on Collision Between Burlington Northern Railroad Freight Trains 602 and 603 near Ledger, Montana, on August 30, 1991'' (NTSB/RAR–93/01). However, it was also apparent that the railroad industry was not persuaded that such technology represented a sound investment in light of other capital needs.

The FRA Administrator held a series of round table discussions with members of industry to come up with ways to increase railway safety. Industry responded with the creation of various communications-based positive train separation and positive train control projects. Also during this time, under the New Generation High Speed program, 59 FR 46470 (September 8, 1994), the FRA initiated a new Incremental Train Control System (ITCS) train control system project in

Michigan. The ITCS project, known within Michigan DOT as the Mercury Project, is jointly funded by FRA, the State of Michigan, and Amtrak. Harmon Industries, the project supplier and builder, describes ITCS as a ''vital overlay'' system. This means that it utilizes the existing track circuits as part of its safety-critical communication-based system to allow higher train operating speeds, particularly at railroad crossings. As of the date of this printing, the first phase of the ITCS system is being tested in the Detroit-to-Chicago line in a 71-mile length of track between Kalamazoo and New Buffalo, Michigan.

Due to the novelty of the use of such complex technology in a railroad signal and train control application, FRA felt a validation and verification process, particularly for the software, was necessary to assure safety. FRA and Harmon agreed that Harmon should employ industry-accepted methods and procedures for safety validation and verification of their hardware and software. In addition, FRA felt that an independent third party should be involved in an assessment of the supplier's safety efforts. The necessity of an assessment was prompted by two concerns. First, FRA was concerned that some safety-related activities during development may be sacrificed in the event the supplier came under pressure to meet a project deadline. Second, a third party auditor often brings a variety of fresh ideas and methods to plug any unintended safety gaps.

FRA feels the ITCS concerns may apply to certain products developed under subpart H in order to ensure their safety integrity. This is particularly important when there are no safety records available on which FRA can assess a new product's reliability and endurance during operations. FRA feels an independent review will greatly enhance the safety of the systems and will ultimately work to the railroad's advantage. The Standards Task Force has recommended specific criteria for determining whether a third party assessment ought to be performed. See § 236.913(h).

Paragraphs (c) through (f) discuss the substance of the third party assessment. This assessment should be performed on the system as it is finally configured, before revenue operations commence, and requires the reviewer to prepare a final report. A typical assessment can be divided into four levels as it progresses: the preliminary level, the functional level, the implementation level, and the closure level.

Paragraph (c) addresses the reviewer's tasks at the preliminary level. Here, the assessor reviews the supplier's processes as set forth in the documentation and provides comments to the supplier. The reviewer should be able to determine vulnerabilities in the supplier's processes and the adequacy of the RSPP and PSP as they apply to the product. ''Acceptable methodology'' is intended to mean standard industry practice, as contained in MIL–STD–882C, such as hazard analysis, fault tree analysis, failure mode and effect criticality analysis, or other accepted applicable methods such as fault injection, Monte Carlo or Petri-net simulation. FRA is aware of many acceptable industry standards, but usage of a less common one in PSP analysis would most likely require a higher level of FRA scrutiny. In addition, the reviewer considers the completeness and adequacy of the safety requirements documents, including the PSP itself.

Paragraph (d) discusses the reviewer's tasks at the functional level. Here, the reviewer will analyze the supplier's methods to establish that they are complete and correct. First, Preliminary Hazard Analysis (PHA) is performed in the design stage of a product. It attempts, in an early stage, to classify the severity of the hazards and to assign an integrity level requirement to each major function. PHA is part of the preliminary safety analysis, as required by the railroad's RSPP.

Traditional methodology practices widely accepted within industry and recognized by military standard MIL–STD–882C include: Hazard Analysis, Fault Tree Analysis (FTA), Failure Mode and Effects Analysis (FMEA), and Failure Modes, Effects, and Criticality Analysis (FMECA).

Hazard analysis is an extension of the PHA performed in the later phases of product development. This hazard analysis focuses more on the detailed functions of the product and its components. A hazard analysis can be repeated as needed as the product matures. A competent safety assessor should be able to determine if sufficient hazard analyses were performed during the product development cycle.

FTA starts with an identification of all hazards and determines their possible causes. Data from earlier incidents can also be used as a starting point for the analysis. This method concentrates on events that are known to lead to hazards.

FMEA considers the failure of any component within a system, tracks the effects of the failure and determines its consequences. FMEA is particularly good at detecting conditions where a single failure can result in a dangerous situation; however, its primary drawback is that it doesn't consider multiple failures. FMEA involves much detailed work and is expensive to apply to large complex systems. FMEA is usually used at a late stage in the development process, and is applied to critical areas, rather than to the complete system.

FMECA is an extension of FMEA that identifies the areas of greatest need.

The above descriptions are taken from ''Safety-Critical Computer Systems'' (Storey, Neil; Addison-Wesley Longman (Harlow, England 1996)) pp. 33–57.

Other simulation methods may also be used in conjunction with the above methods, or by themselves when appropriate. These simulation methods include fault injection, a technique that evaluates performance by injecting known faults at random times during a simulation period; Markov modeling, a modeling technique that consists of states and transitions that control events; Monte Carlo model, a simulation technique based on randomly-occurring events; and Petri Net, an abstract, formal model of information flow that shows static and dynamic properties of a system. A petri-net is usually represented as a graph having two types of nodes (called places and transitions) connected by arcs, and markings (called tokens) indicating dynamic properties.

Paragraph (e) addresses what must be performed at the implementation level. At this stage, the product is now beginning to take form. The reviewer typically evaluates the software. Most likely, the software will be in modular form, such that software modules are produced in accordance to a particular function. The reviewer must select a significant number of modules to be able to establish that software is being developed in a safe manner.

Paragraph (f) discusses the reviewer's tasks at closure. The reviewer's primary task at this stage is to prepare a final report where all product deficiencies are noted in detail. This final report may include material previously presented to the supplier during earlier development stages.

Appendix E to Part 236—Human-Machine Interface (HMI)

This appendix provides human factors design criteria. A small group of members from the PTC Working Group comprised the Human Factors Task Force. The task given them was to develop comprehensive design considerations for human factors and human-machine interfaces. This appendix outlines their efforts, which address the basic human factors principles for the design and operation of displays, controls, supporting software functions, and other

components in processor-based signal or train control systems and subsystems. The HMI requirements proposed in this appendix attempt to capture the lessons learned from the research, design, and implementation of similar technology in other modes of transportation and other industries. FRA has placed in the docket for this rulemaking a research document that contains a broad spectrum of references to the literature in this area.

The overriding goal of this appendix is to minimize the potential for design-induced error by ensuring that processor-based signal or train control systems are suitable for operators, and their tasks and environment. The overriding conclusion from the research is that processor-based signal or train control systems that have been designed with human-centered design principles in mind—system products that keep human operators as the central active component of the system—are more likely to result in improved safety.

Paragraph (a) addresses the purpose of the HMI requirement. The task force concluded from its research that increased automation of systems through the use of products involves negative safety effects, as well as positive ones. Products with human-centered design features, however are more likely to result in improved system safety. The human-centered systems approach recognizes that technology is only as effective as the humans who must use it. HMIT designs that do not consider human capabilities, limitations, characteristics and motivation will be less efficient, less effective and less safe to operate. Therefore, the HMI requirement articulated in this appendix proposes to promote consideration of these issues by designers during the development of HMIs.

Paragraph (b) defines two essential terms, ''designer'' and ''operator,'' which are critical to a clear understanding of the HMI requirement.

Paragraph (c) highlights various issues that designers should be aware of and attempt to prevent during the design process. For example, paragraph (c)(1) addresses ''reduced situation awareness and over-reliance,'' which can result when products transform the role of a human operator from an active system controller to a passive system monitor. Essentially, a passive operator is less alert to what the system is doing, may rely too heavily on the system and become less capable of reacting properly when the system requires the operator's attention. For that reason the HMI requirement promotes operator action to maintain operation of the equipment and provide numerous opportunities for practice. The requirement further provides that operator action be sustained for a period of at least 30 minutes so that an operator remains involved and resistant to distraction, e.g., management by consent rather than management by exception. In addition, the HMI requirement promotes advance warning. This requirement is designed to prevent an overreaction by operators who need to respond to an emergency. By warning operators in advance when action is required, the operator is more likely to take appropriate action. The final requirement addressing situation awareness involves equalization of the workload. Essentially, the operator should be assisted more during high workload conditions and less during low workload conditions. To the extent the HMI design addresses the proposed situation awareness requirements, operators are more likely to be alert and react properly when the system requires their attention.

Paragraph (c)(2) addresses another HMI issue, ''predictability and consistency'' in product behavior. For example, objects designed for predictability should move forward when an operator pushes the object or its controller forward and valves designed for consistency should open in the same direction. In addition, new controls that require similar actions to older like controls should minimize the interference of learning in the transfer of knowledge and take advantage of already automated behaviors (i.e., new controls should be ''backwards compatible''). The consistency envisioned by the HMI requirement would also apply to the terminology used for text and graphic displays.

Paragraph (c)(3) addresses a third HMI issue, which involves a human's limited memory and ability to process information. The fact that humans can process only one or two streams of information at a time without loss of information is termed ''selective attention.'' A remedy for selective attention is reducing an operator's information processing load by focusing on integrated information, the format of the information, and by testing decision aids to evaluate their true benefits. These solutions are proposed in this paragraph. Finally, paragraph (c)(4) addresses miscellaneous human factor concerns that must be addressed at the design stage.

Paragraph (d) addresses design elements for on-board displays and controls. Paragraph (d)(1) articulates specific requirements for the location of displays and controls. These requirements need little explanation, since they are well-known principles. However, it must be recognized that these principles may at times conflict with each other. For example, it may not be possible to arrange controls according to their expected order of use and locate displays as close as possible to the controls that affect them. Trade-offs are often required in the design of effective, efficient and safe HMIs. System designers must ensure that appropriate personnel evaluate these critical decisions and make the appropriate trade-offs.

Paragraph (d)(2) pertains to information management by highlighting some of the industry recognized minimum standards for human-centered design of displays. Important information management issues include displaying information to emphasize its importance (i.e. alarms and other significant changes or unusual events presented with clear salient indicators, not by small changes or ambiguous displays that are easy to miss), avoiding unnecessary detail where text is used, avoiding text in all capital letters, and designing warnings to match the level of risk so that more dangerous conditions have aural and or visual signals that are associated with a higher level of urgency. Finally, paragraph (e) of the HMI appendix addresses requirements for problem management. These requirements essentially address in the design and implementation phase of development, the need to support situation awareness, response selection and contingency planning under unusual circumstances. These types of requirements are designed to avoid the errors humans tend to make during emergency situations and provide alternatives when the initial responses to the emergency fail.

Generally, all the literature concludes that as the nature of the task changes, performance related to those tasks inevitably changes. The nature and potential consequences of these changes can be determined by comparing the functions of an old system to that which is proposed in a new system. System evaluations of the impact of new technology on human operators must be conducted to help identify new sources of error. FRA believes that HMI evaluations conducted in accordance with the requirements of this appendix prior to implementation of new processor based signal and train control technology will render products that are safe and efficient.

Regulatory Impact

Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule has been evaluated in accordance with existing policies and procedures and is considered ''nonsignificant'' under Executive Order 12866. It is considered to be significant under DOT policies and procedures (*see* 44 FR 11034).

FRA has prepared an Initial Regulatory Evaluation addressing the economic impact of the proposed rule. This regulatory evaluation has been placed in the docket and is available for public inspection and copying during normal business hours at FRA's docket room at the Office of Chief Counsel, FRA, 1120 Vermont Avenue, NW, Washington, DC 20590. Copies may also be obtained by submitting a written request to the FRA Docket Clerk at the above address.

Anticipated Costs and Benefits

Signal and train control systems act to prevent collisions between on-track equipment, in some cases to warn of defective track or other hazards and in some cases to govern train speed, preventing speed-related derailments. Thus the ultimate benefit of any signal and train control systems safety regulation is the provision of a safe operating environment for trains. The particular benefit of this proposed rule is the facilitation of introducing new technology into the field of signal and train control under minimal government scrutiny.

The proposed rule would regulate processor based signal and train control systems. Technological advances have made these systems increasingly more attractive to railroads, yet existing FRA rules concerning design and testing of these systems impose restrictions which are unrealistic when applied to processor-based systems. In addition, in many instances, these systems are simply beyond the scope of current rules regulating traditional relay-based signal and train control systems. Consequently, FRA has been forced to regulate by exception, by issuing waivers or exemptions to its regulations on a case-by-case basis. This process has generally been recognized as time-consuming and unpredictable for the industry.

The proposed performance standard is that any new system must be at least as safe as the existing system. It does not mandate use of processor-based systems, but rather proposes performance standards for their design and use, should a railroad intend to implement one. FRA believes that a railroad would adopt a new system under these rules only for one or more of the following three reasons:

(1) The new system is safer;

(2) The new system is less expensive and will not diminish the existing level of safety; or

(3) Continued maintenance of the existing system is no longer feasible.

In the first case, if a new system is safer, FRA assumes the railroad would adopt it only if it provided benefits which exceed costs to the railroad. Also, because the new system is safer, society at large would benefit. In the second case, if a new system were equally safe but less expensive, then the benefits would outweigh the costs to the railroad. Third, if the existing system is no longer feasible to maintain, the railroad under existing rules would be required to petition FRA in order to remove it, or would be required to replace it with a new system. FRA is not bound to grant such petitions, and the proposed rule does not eliminate current rules regarding this abandonment process. In this instance, if the railroad replaces its system, FRA assumes it will choose the most cost effective alternative, and the proposed rule would ensure these alternatives are at least as safe as the current system. Thus, FRA envisions only one case where the proposed rule could possibly impose a situation not in the railroad's best interest. FRA does not believe this case would be a common occurrence.

The proposed rule would require substantial safety documentation from the railroad. The documentation is required to explain how each railroad will comply with the performance standard. FRA expects these internal procedures to be more efficient than current FRA rules, since they will be particularized for each railroad.

An undetermined question is whether the cost of writing the railroad's safety plan and product safety plan exceed the benefit from the increased flexibility. FRA does not believe so. It appears that the costliest part of the documentation will be the risk assessment. Currently, a substantial portion of this work is performed by suppliers. Each supplier now serving the rail industry uses some form of risk/safety analysis which can be documented. The primary cost of this proposed rule is the gathering of that safety information into one source. This would likely be a single time expense for each system, unless the system were not to perform as expected in service. The corresponding benefit would be the railroad's ability to use the more flexible maintenance standards over the life of the system. An offset to the recurring benefit would be the cost of tracking failures which might lead to an unsafe condition.

Under the proposed rule, railroads using existing processor-based signal and train control systems would be required to maintain a software management control plan. FRA believes this is a desirable safety practice, as it would avoid incorrectly installing the wrong programming, either through hardware or software, in a system. FRA also believes that under the current regulations, replacing a processor or program would constitute disarrangement and would require physical testing of every device or appliance affected by that processor. In some cases, all of the switches and signals on a line are tied to a processor. It is not feasible to conduct the currently required tests, and it is certainly less expensive to maintain a software management control plan. Thus, insofar as existing processor-based systems are concerned, the proposed rule would be less costly than the current rule, and FRA believes it would be more effective in promoting safety.

FRA has not quantified the above benefits because it has no way to estimate how many systems are likely to be covered by this rule, what the incremental costs would be, and when the benefits would occur. Because of the industry consensus involved (labor, management, and suppliers), FRA believes the benefits appear to outweigh the cost. The rule does not appear to have any effect of transferring costs from the railroads to the suppliers. Thus, FRA believes the railroads' assent appears to be based on genuine economics.

In short, FRA does not know the magnitude of the benefits and costs because of the performance standard concepts embodied in the proposed rule, but believes that benefits will outweigh costs.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of final rules to assess their impact on small entities, unless the Secretary certifies that a final rule will not have a significant economic impact on a substantial number of small entities. This proposed rule should not have a significant economic impact on small entities. The proposed rule does not require the implementation of processor-based signal and train control systems, but merely proposes a performance standard for the design and operation of them. Smaller entities are not required to develop new systems with costly risk analyses. In fact, the proposed rule has been designed to

allow small entities to be able to ''recycle'' risk analyses by taking advantage of commercially-available products. Previously-developed risk analyses should require only minor further changes to reflect how the product is to be used in the railroad's own operating environment. In conclusion, FRA believes that any impact on small entities will be minimal.

Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq*. The sections that contain the new information collection requirements and the estimated time to fulfill each requirement are as follows:

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
234.275—Processor Based Systems—Deviations from requirements.	100 Railroads	25 letters	2 hours	50 hours	$1,900
236.18—Software Management Control Plan.	100 Railroads	30 plans	20 hours	600 hours	22,800
236.905—Railroad Safety Program Plan (RSPP).	100 Railroads	10 plans	50 hours	500 hours	21,800
RSPP Modifications	100 Railroads	5 RSPP Mod.	20 hours	100 hours	4,360
236.907—Product Safety Plan (PSP)	100 Railroads	20 plans	80 hours	1,600 hours	60,800
236.909—Minimum Performance Standard—Petitions for Review and Approval.	100 Railroads	5 petitions	60 minutes	5 hours	330
Full Risk Assessment	100 Railroads	3 full assess	1,000 hours	3,000 hours	375,000
Abbreviated Risk Assessments	100 Railroads	16 abb. assess	80 hours	1,280 hours	160,000
Subsequent Years—Full Risk Assessments.	100 Railroads	5 amend docs	400 hours	2,000 hours	250,000
Subsequent Years—Abbreviated Risk Assess.	100 Railroads	5 amend docs	20 hours	100 hours	12,500
Alternative Risk Assessments	100 Railroads	3 documents	40 hours	120 hours	4,560
236.911—Exclusions—Notifications	100 Railroads	20 notifications	2 hours	40 hours	1,520
Additional Product Safety Pans (PSPs).	100 Railroads	2 plans	80 hours	160 hours	6,080
236.913—Notifications to FRA of PSPs.					
Informational Filings/Petitions for Approval.	100 Railroads	5 notifications	60 minutes	5 hours	190
Informational Filing—Add'l Info. Requested.	100 Railroads	32 filings	8 hours	256 hours	9,728
Additional Documents Requested/by FRA.	100 Railroads	10 data calls	8 hours	80 hours	3,040
Technical Consultations	100 Railroads	10 data calls	4 hours	40 hours	1,520
Petitions for Final Approval	100 Railroads	5 consultations	8 hours	40 hours	1,400
Additional Documents Requested by FRA.	100 Railroads	20 petitions	4 hours	80 hours	3,040
Further Consultations	100 Railroads	5 data calls	8 hours	40 hours	1,520
Other Petitions for Approval	100 Railroads	5 consultations	4 hours	20 hours	760
Additional Documents/Info. Requested.	100 Railroads	5 petitions	60 minutes	5 hours	190
236.917—Retention of Records	100 Railroads	22 documents	4 hours	88 hours	3,344
PSPs—Safety Hazards—Reporting Inconsistencies.	100 Railroads	80 reports	2 hours	160 hours	6,080
236.919—Operations and Maintenance Manual.	100 Railroads	25 manuals	4 hours	100 hours	3,800
Plans For Safety-Critical Products	100 Railroads	20 plans	40 hours	800 hours	30,400
Hardware/Software Revi. Documented in OMM.	100 Railroads	5 revisions	2 hours	10 hours	380
Identification of Safety-Critical Components.	100 Railroads	10,000 markng	1 minute	167 hours	4,843
236.921—Training Programs	100 Railroads	20 programs	80 hours	1,600 hours	60,800
Training Sessions—Railroad Employees.	100 Railroads	220 sessions	40 hours/20 hours	8,400 hours	1,050,000
236.923—Task Analysis/Basic Requirements—Records.	4,400 RR Employees.	4,400 records	10 minutes	733 hours	27,854

All estimates include the time for reviewing instructions, searching existing data sources, gathering or maintaining the needed data, and reviewing the information. Pursuant to 44 U.S.C. 3506(c)(2)(B), the FRA solicits comments concerning: whether these information collection requirements are necessary for the proper performance of the function of FRA, including whether the information has practical utility; the accuracy of FRA's estimates of the burden of the information collection requirements; the quality, utility, and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized. For information or a copy of the paperwork package submitted to OMB contact Robert Brogan at (202) 493–6292.

FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a ''user friendly'' format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

Comments must be received no later than October 9, 2001. Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to Robert Brogan, Federal Railroad Administration, RRS–21, Mail Stop 17, 1120 Vermont Ave., NW., MS–17, Washington, DC 20590.

OMB is required to make a decision concerning the collection of information requirements contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

FRA cannot impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the effective date of a final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

Environmental Impact

FRA has evaluated this proposed regulation in accordance with the agency's ''Procedures for Considering Environmental Impacts'' as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and related statutes and directives. The agency has determined that the proposed regulation would not have a significant impact on the human or natural environment and is categorically excluded from detailed environmental review pursuant to section 4(c)(20) of FRA's Procedures. Neither an environmental assessment or an environmental impact statement is required in this instance. The agency's review has confirmed the applicability of the categorical exclusion to this proposed regulation and the conclusion that the proposed rule would not, if implemented, have a significant environmental impact.

Federalism Implications

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and it has been determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. However, if it is determined through the comment period that federalism is impacted, FRA will document its consultations with State and local officials as appropriate and a federalism summary impact statement will be included in any final rule. FRA has consulted State and local officials in developing this proposed rule. The RSAC, which recommended this proposed rule, has as permanent members two organizations representing State and local interests: the AASHTO and the ASRSM. RSAC regularly provides recommendations to the FRA Administrator for solutions to regulatory issues that reflect significant input from its State members.

Compliance With the Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) each federal agency ''shall, unless otherwise prohibited by law, assess the effects of Federal Regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).'' Sec. 201. Section 202 of the Act further requires that ''before promulgating any general notice of proposed rulemaking that is likely to result in promulgation of any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement * * *'' detailing the effect on State, local and tribal governments and the private sector. The proposed rules issued today do not include any mandates which will result in the expenditure, in the aggregate, of $100,000,000 or more in any one year, and thus preparation of a statement is not required.

Request for Public Comments

FRA proposes to amend parts 209, 234, and 236 of title 49, Code of Federal Regulations, as set forth below. FRA solicits comments on all aspects of the proposed rule whether through written submissions, participation in a public hearing, or both. FRA may make changes in the final rule based on comments received in response to this proposed rule.

List of Subjects

49 CFR Part 209

Administrative practice and procedure.

49 CFR Part 234

Highway safety, Railroad safety.

49 CFR Part 236

Railroad safety, Reporting and recordkeeping requirements.

The Proposed Rule

In consideration of the foregoing, FRA proposes to amend chapter II of title 49, Code of Federal Regulations as follows:

PART 209—[AMENDED]

1. The authority citation for part 209 continues to read as follows:

49 U.S.C. 20103, 20107, 20111, 20112, 20114, and 49 CFR 1.49.

2. Revise paragraph (a) of section 209.11 to read as follows:

(a) This section governs the procedures for requesting confidential treatment of any document filed with or otherwise provided to FRA in connection with its enforcement of statutes or FRA regulations related to railroad safety. For purposes of this section, ''enforcement'' shall include receipt of documents required to be submitted by FRA regulations, and all investigative and compliance activities, in addition to the development of violation reports and recommendations for prosecution.

* * * * *

PART 234—[AMENDED]

3. The authority citation for part 234 continues to read as follows:

49 U.S.C. 20103, 20107, and 49 CFR 1.49.

4. Add a new undesignated centerheading and new section 234.275 to read as follows:

Requirements for Processor-Based Systems

§ 234.275 Processor-based systems.

(a) The definitions in § 236.903 of this chapter shall apply to this section, where applicable.

(b) In lieu of compliance with the requirements of this subpart, a railroad may elect to qualify an existing product under part 236, subpart H of this chapter. Highway-rail grade crossing warning systems which contain new or novel technology or provide safety-critical data to a railroad signal system shall comply with part 236, subpart H of this chapter. New or novel technology refers to a technology not previously recognized for use as of (date of final rule publication).

(c) The Product Safety Plan must explain how the performance objective sought to be addressed by each of the particular requirements of this subpart is met by the product, why the objective is not relevant to the product's design, or how safety requirements are satisfied using alternative means. Deviation from those particular requirements is authorized if an adequate explanation is provided, making reference to relevant elements of the Product Safety Plan, and if the product satisfies the performance standard set forth in § 236.909 of this chapter. (See § 236.907(a)(14) of this chapter). Any existing products both used at highway-rail grade crossing warning systems and which provide safety-critical data to or receive safety-critical data from a railroad signal or train control system shall be included in the software management control plan as required in § 236.18 of this chapter.

(d) The following exclusions from the latitude provided by this section apply:

(1) Nothing in this section authorizes deviation from applicable design requirements for automated warning devices at highway-rail grade crossings in the Manual on Uniform Traffic Control Devices (MUTCD), 2000 Millennium Edition, Federal Highway Administration (FHWA), dated December 18, 2000, including Errata #1 to MUTCD 2000 Millennium Edition dated June 14, 2001 (http://mutcd.fhwa.dot.gov/).

(2) Nothing in this section authorizes deviation from the following requirements of this subpart:

(i) § 234.207(b) (Adjustment, repair, or replacement of a component);
(ii) § 234.209(b) (Interference with normal functioning of system);
(iii) § 234.211 (Security of warning system apparatus);
(iv) § 234.217 (Flashing light units);
(v) § 234.219 (Gate arm lights and light cable);
(vi) § 234.221 (Lamp voltage);
(vii) § 234.223 (Gate arm);
(viii) § 234.225 (Activation of warning system);
(ix) § 234.227 (Train detection apparatus)—if a train detection circuit is employed to determine the train's presence;
(x) § 234.229 (Shunting sensitivity)—if a conventional track circuit is employed;
(xi) § 234.231 (Fouling wires)—if a conventional train detection circuit is employed;
(xii) § 234.233 (Rail joints)—if a track circuit is employed;
(xiii) § 234.235 (Insulated rail joints)—if a track circuit is employed;
(xiv) § 234.237 (Reverse switch cut-out circuit); or
(xv) § 234.245 (Signs).

(e) Deviation from the requirement of § 234.203 (Control circuits) that circuits be designed on a fail-safe principle must be separately justified at the component, subsystem and system level using the criteria of § 236.909 of this chapter.

PART 236—[AMENDED]

5. Revise the authority citation to part 236 to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20501–20505, and 49 CFR 1.49.

6. Amend § 236.0 to revise paragraphs (a) and (b), redesignate paragraph (f) as paragraph (g), and add new paragraph (f) to read as follows:

§ 236.0 Applicability.

(a) Except as provided in paragraph (b) of this section, this part applies to all railroads.

(b) This part does not apply to-

(1) a railroad that operates only on track inside an installation that is not part of the general railroad system of transportation; or

(2) Rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

* * * * *

(f) The requirements of subpart H of this part apply to safety-critical processor-based signal and train control systems, including subsystems and components thereof, developed under the terms and conditions of that subpart.

7. Add new § 236.18 to read as follows:

§ 236.18 Software management control plan.

(a) Within 24 months of (date 60 days after publication of final rule), each railroad shall adopt a software management control plan for signal and train control systems. Railroads commencing operations after (date 60 days after publication of final rule) shall adopt a software management control plan for signal and train control systems prior to commencing operations.

(b) For purposes of this section, ''software management control plan'' means a plan designed to ensure that the proper and intended software version for each specific site and location is documented (mapped) and maintained through the life cycle of the system. The plan must further identify the tests required by the system developer and/or the railroads in the event of replacement, modification, and disarrangement.

8. Revise § 236.110 to read as follows:

§ 236.110 Results of tests.

(a) Results of tests made in compliance with §§ 236.102 to 236.109, inclusive; 236.376 to 236.387, inclusive; 236.576; 236.577; 236.586 to 236.589, inclusive; and 236.917(a) must be recorded on preprinted forms provided by the railroad or by electronic means, subject to approval by the FRA Associate Administrator for Safety. These records must show the name of the railroad, place, and date, equipment tested, results of tests, repairs, replacements, adjustments made, and condition in which the apparatus was left. Each record must be:

(1) Signed by the employee making the test, or electronically coded or identified by number of the automated test equipment (where applicable);

(2) Unless otherwise noted, filed in the office of a supervisory official having jurisdiction; and

(3) Available for inspection and replication by FRA.

(b) Results of tests made in compliance with § 236.587 must be retained for 92 days.

(c) Results of tests made in compliance with § 236.917(a) must be retained as follows:

(1) Results of tests that pertain to installation or modification must be retained for the life cycle of the equipment tested and may be kept in any office designated by the railroad; and

(2) Results of periodic tests required for maintenance or repair of the equipment tested must be retained until the next record is filed but in no case less than one year.

(d) Results of all other tests listed in this section must be retained until the next record is filed but in no case less than one year.

(e) Electronic or automated tracking systems used to meet the requirements contained in paragraph (a) of this section must be capable of being reviewed and monitored by FRA at any time to ensure the integrity of the system. FRA's Associate Administrator for Safety may prohibit or revoke a railroad's authority to utilize an electronic or automated tracking system in lieu of preprinted forms if FRA finds

that the electronic or automated tracking system is not properly secure, is inaccessible to FRA or railroad employees requiring access to discharge their assigned duties, or fails to adequately track and monitor the equipment. In such case, FRA records such a determination in writing, includes a statement of the basis for such action, and provides a copy of the document to the affected railroad.

9. Add new § 236.787a to read as follows:

§ 236.787a Railroad.

Railroad means any form of non-highway ground transportation that runs on rails or electromagnetic guideways and any entity providing such transportation, including—

(a) Commuter or other short-haul railroad passenger service in a metropolitan or suburban area and commuter railroad service that was operated by the Consolidated Rail Corporation on January 1, 1979; and

(b) High speed ground transportation systems that connect metropolitan areas, without regard to whether those systems use new technologies not associated with traditional railroads; but does not include rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

10. Add new subpart H to read as follows:

Subpart H—Standards for Processor-Based Signal and Train Control Systems

Sec.

236.901 Purpose and scope.
236.903 Definitions.
236.905 Railroad Safety Program Plan (RSPP).
236.907 Product Safety Plan (PSP).
236.909 Minimum performance standard.
236.911 Exclusions.
236.913 Notification to FRA of PSPs.
236.915 Implementation and operation.
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236.927 Training specific to locomotive engineers and other operating personnel.
236.929 Training specific to roadway workers.

Subpart H—Standards for Processor-Based Signal and Train Control Systems

§ 236.901 Purpose and scope.

(a) What is the purpose of this subpart?

The purpose of this subpart is to ensure the safe operation of trains using safety-critical products, as defined in § 236.903, and to facilitate the development of those products.

(b) What topics does it cover?

This subpart prescribes minimum, performance-based safety standards for safety-critical products, including requirements to ensure that the development, installation, implementation, inspection, testing, operation, maintenance, repair, and modification of those products will achieve and maintain an acceptable level of safety. This subpart also prescribes standards to ensure that personnel working with safety-critical products receive appropriate training. Each railroad may prescribe additional or more stringent rules, and other special instructions, that are not inconsistent with this subpart.

(c) What other rules apply?

(1) This subpart does not exempt a railroad from compliance with the requirements of subparts A through G of this part, except to the extent a PSP satisfactorily explains:

(i) How the objectives of any such requirements are met by the product;

(ii) Why the objectives of any such requirements are not relevant to the product; or

(iii) How the requirement is satisfied using alternative means. (See § 236.907(a)(14)).

(2) Products subject to this subpart are also subject to applicable requirements of parts 233, 234 and 235 of this chapter. See § 234.275 of this chapter with respect to use of this subpart to qualify certain products for use within highway-rail grade crossing warning systems.

(3) Information required to be submitted by this subpart that a submitter deems to be trade secrets, or commercial or financial information that is privileged or confidential under Exemption 4 of the Freedom of Information Act, 5 U.S.C. 552(b)(4), shall be so labeled in accordance with the provisions of § 209.11 of this chapter. FRA handles information so labeled in accordance with the provisions of § 209.11 of this chapter.

§ 236.903 Definitions.

As used in this subpart—

Associate Administrator for Safety means the Associate Administrator for Safety, FRA, or that person's delegate as designated in writing.

Component means an element, device, or appliance (including those whose nature is electrical, mechanical, hardware, or software) that is part of a system or subsystem.

Configuration management control plan means a plan designed to ensure that the proper and intended product configuration, including the hardware components and software version, is documented and maintained through the life cycle of products in-use.

Executive software means software common to all installations of a given product. It generally is used to schedule the execution of the site-specific application programs, run timers, read inputs, drive outputs, perform self-diagnostics, access and check memory, and monitor the execution of the application software to detect unsolicited changes in outputs.

FRA means the Federal Railroad Administration.

Full automatic operation means that mode of an automatic train control system capable of operating without external human influence, in which the locomotive engineer/operator may act as a passive system monitor, in addition to an active system controller.

Hazard means an existing or potential condition that can result in an accident.

High degree of confidence means that there exists credible safety analysis which is sufficient to persuade a reasonable decision-maker that the likelihood of the proposed condition associated with the new product being less safe than the previous condition is very small (remote).

Human factors refers to a body of knowledge about human limitations, human abilities, and other human characteristics, such as behavior and motivation, that must be considered in product design.

Human-machine interface (HMI) means the interrelated set of controls and displays that allows humans to interact with the machine.

Initialization refers to the startup process when it is determined that a product has all required data input and the product is prepared to function as intended.

Mandatory directive has the meaning set forth in § 220.5 of this chapter.

Materials handling refers to explicit instructions for handling safety-critical components established to comply with procedures specified in the PSP.

Mean Time To Hazardous Event (MTTHE) means the average or expected time that a subsystem or component will operate prior to the occurrence of an unsafe failure.

New or next-generation train control system means a train control system using technologies not in use in revenue service at the time of PSP submission or without established histories of safe practice.

Petition for approval means a petition to FRA for approval to use a product on a railroad as described in its PSP. The petition for approval contains only: information relevant to determining the safety of the resulting system; information relevant to determining compliance with this part; and information relevant to determining the safety of the product, including a complete copy of the product's PSP and supporting safety analysis.

Predefined change means any post-implementation modification to the use of a product that is provided for in the PSP (see § 236.907(b)).

Preliminary Safety Analysis means the initial PSP analysis which results in a comprehensive listing of all safety functions that a system, subsystem, or component will perform. The analysis will insure that hazards are controlled when they occur, and that the risks associated with such hazards are either eliminated or mitigated prior to further development. (The initial product safety plan analysis methodology that provides a safety plan which regulates quality assurance, development, testing, implementation, and maintenance of each product.)

Previous Condition refers to the estimated risk inherent in the portion of the existing method of operation that is relevant to the change under analysis (including the elements of any existing signal or train control system relevant to the review of the product).

Processor-based, as used in this subpart, means dependent on a digital processor for its proper functioning.

Product means a processor-based signal or train control system, subsystem, or component.

Product Safety Plan (or *PSP*) refers to a formal document which describes in detail all of the safety aspects of the product, including procedures for its development, installation, implementation, operation, maintenance, repair, inspection, testing and modification, as well as analyses supporting its safety claims, as described in § 236.907.

Railroad Safety Program Plan (or *RSPP*) refers to a formal document which describes a railroad's strategy for addressing safety hazards associated with operation of products under this subpart and its program for execution of such strategy though the use of PSP requirements, as described in § 236.905.

Revision control means a chain of custody regimen designed to positively identify safety-critical components and spare equipment availability, including repair/replacement tracking in accordance with procedures outlined in the PSP.

Risk means the expected probability of occurrence for an individual accident event (probability) multiplied by the severity of the expected consequences associated with the accident (severity).

Risk assessment means the process of determining, either quantitatively or qualitatively, the measure of risk associated with

(1) Use of the product under all intended operating conditions or

(2) The previous condition.

Safety-critical, as applied to a function, a system, or any portion thereof, means the correct performance of which is essential to safety of personnel and/or equipment, or the incorrect performance of which could cause a hazardous condition, or allow a hazardous condition which was intended to be prevented by the function or system to exist.

Subsystem means a defined portion of a system.

System refers to a signal or train control system and includes all subsystems and components thereof, as the context requires.

System Safety Precedence means the order of precedence in which methods used to eliminate or control identified hazards within a system are implemented.

Validation means the process of determining whether a product's design requirements fulfill its intended design objectives during its development and life cycle. The goal of the validation process is to determine ''whether the correct product was built.''

Verification means the process of determining whether the results of a given phase of the development cycle fulfill the validated requirements established at the start of that phase. The goal of the verification process is to determine ''whether the product was built correctly.''

§ 236.905 Railroad Safety Program Plan (RSPP).

(a) What is the purpose of an RSPP? A railroad subject to this subpart shall develop an RSPP, subject to FRA approval, that serves as its principal safety document for all safety-critical products. The RSPP must establish the minimum PSP requirements that will govern the development and implementation of all products subject to this subpart, consistent with the provisions contained in § 236.907.

(b) What subject areas must the RSPP address? The railroad's RSPP must address, at a minimum, the following subject areas:

(1) *Requirements and concepts.* The RSPP must require a description of the preliminary safety analysis, including:

(i) A complete description of methods used to evaluate a system's behavioral characteristics;

(ii) A complete description of risk assessment procedures;

(iii) The system safety precedence followed; and

(iv) The identification of the safety assessment process.

(2) *Design for verification and validation.* The RSPP must require the identification of validation and verification methods for the preliminary safety analysis, initial development process and future incremental changes, including standards to be used in the validation and verification process, consistent with Appendix C to this part. The RSPP must require that a copy of any non-published standards be included with the PSP.

(3) *Design for human factors.* The RSPP must require a description of the process used during product development to identify human factors issues and develop design requirements which address those issues.

(4) *Configuration management control plan.* The RSPP must specify requirements for configuration management for all products to which this subpart applies.

(c) How are RSPP's approved?

(1) Each railroad shall submit a petition for approval of RSPP in triplicate to the Associate Administrator for Safety, FRA, 1120 Vermont Avenue, NW., Mail Stop 25, Washington, DC 20590. The petition must contain a copy of the proposed RSPP and the name, title, address, and telephone number of the railroad's primary contact person for review of the petition.

(2) Normally within 180 days of receipt of a petition for approval of an RSPP, FRA:

(i) Grants the petition, if FRA finds that the petition complies with applicable requirements of this subpart, attaching any special conditions to the approval of the petition as necessary to carry out the requirements of this subpart;

(ii) Denies the petition, setting forth reasons for denial; or

(iii) Requests additional information.

(3) If no action is taken on the petition within 180 days, the petition remains pending for decision. The petitioner is encouraged to contact FRA for information concerning its status.

(4) FRA may reopen consideration of any previously-approved petition for cause, providing reasons for such action.

(d) How are RSPP's modified?

(1) Railroads shall obtain FRA approval for any modification to their RSPP which affects a safety-critical

requirement of a PSP. Other modifications do not require FRA approval.

(2) Petitions for FRA approval of RSPP modifications are subject to the same procedures as petitions for initial RSPP approval, as specified in paragraph (c) of this section. In addition, such petitions must identify the proposed modifications to be made, the reason for the modifications, and the effect of the modifications on safety.

§ 236.907 Product Safety Plan (PSP).

(a) What must a PSP contain? The PSP must include the following:

(1) A complete description of the product, including a list of all product components and their physical relationship in the subsystem or system;

(2) A description of the railroad operation or categories of operations on which the product is designed to be used, including train movement density, gross tonnage, passenger train movement density, hazardous materials volume, railroad operating rules, and operating speeds;

(3) An operational concepts document, including a complete description of the product functionality and information flows;

(4) A safety requirements document, including a list with complete descriptions of all functions which the product performs to enhance or preserve safety;

(5) A document describing the manner in which product architecture satisfies safety requirements;

(6) A hazard log consisting of a comprehensive description of all safety-relevant hazards to be addressed during the life cycle of the product, including maximum threshold limits for each hazard (for unidentified hazards, the threshold shall be exceeded at one occurrence);

(7) A risk assessment, as prescribed in § 236.909 and Appendix B to this part;

(8) A hazard mitigation analysis, including a complete and comprehensive description of all hazards to be addressed in the system design and development, mitigation techniques used, and system safety precedence followed, as prescribed by the applicable RSPP;

(9) A complete description of the safety assessment and validation and verification processes applied to the product and the results of these processes, describing how subject areas covered in Appendix C to this part are either: addressed directly, addressed using other safety criteria, or not applicable;

(10) A complete description of the safety assurance concepts used in the product design, including an explanation of the design principles and assumptions;

(11) A human factors analysis, including a complete description of all human-machine interfaces, a complete description of all functions performed by humans in connection with the product to enhance or preserve safety, and an analysis in accordance with Appendix E to this part or in accordance with other criteria if demonstrated to the Associate Administrator for Safety to be equally suitable;

(12) A complete description of the specific training necessary to ensure the safe and proper installation, implementation, operation, maintenance, repair, inspection, testing, and modification of the product;

(13) A complete description of the specific procedures and test equipment necessary to ensure the safe and proper installation, implementation, operation, maintenance, repair, inspection, testing, and modification of the product. These procedures, including calibration requirements, shall be consistent with or explain deviations from the equipment manufacturer's recommendations;

(14) An analysis of the applicability of the requirements of subparts A-G of this part to the product that may no longer apply or are satisfied by the product using an alternative method, and a complete explanation of the manner in which those requirements are otherwise fulfilled (see § 234.275 of this chapter and § 236.901(c));

(15) A complete description of the necessary security measures for the product over its life-cycle;

(16) A complete description of each warning to be placed in the Operations and Maintenance Manual identified in § 236.919, and of all warning labels required to be placed on equipment as necessary to ensure safety;

(17) A complete description of all initial implementation testing procedures necessary to establish that safety-functional requirements are met and safety-critical hazards are appropriately mitigated;

(18) A complete description of:

(i) All post-implementation testing (validation) and monitoring procedures, including the intervals necessary to establish that safety-functional requirements, safety-critical hazard mitigation processes, and safety-critical tolerances are not compromised over time, over use, or after maintenance (repair, replacement, adjustment) is performed; and

(ii) Each record necessary to ensure the safety of the system that is associated with periodic maintenance, inspections, tests, repairs, replacements, adjustments, and the system's resulting conditions, including records of component failures resulting in safety-relevant hazards (see § 236.917(e)(3));

(19) A complete description of any safety-critical assumptions regarding availability of the product, and a complete description of all backup methods of operation; and

(20) A complete description of all incremental and predefined changes (see paragraphs (b) and (c) of this section).

(b) What requirements apply to predefined changes?

(1) Predefined changes are not considered design modifications requiring an entirely new safety verification process, a revised PSP, and informational filing or petition for approval in accordance with § 236.915. However, the risk assessment for the product must demonstrate that operation of the product, as modified by any predefined change, satisfies the minimum performance standard.

(2) The PSP must identify configuration/revision control measures designed to ensure that safety-functional requirements and safety-critical hazard mitigation processes are not compromised as a result of any such change.

(c) What requirements apply to other product changes? Incremental changes are planned product version changes described in the initial PSP where slightly different specifications are used to allow the gradual enhancement of the product's capabilities. Incremental changes shall require verification and validation to the extent the changes involve safety-critical functions. Changes classified as maintenance require validation.

§ 236.909 Minimum performance standard.

(a) What is the minimum performance standard for products covered by this subpart? The safety analysis included in the railroad's PSP must establish with a high degree of confidence that introduction of the product will not result in risk that exceeds the previous condition. The railroad shall make the determination, prior to filing its petition for approval or informational filing, that this standard has been met and shall make available the necessary analyses and documentation as provided in this subpart.

(b) How does FRA determine whether the PSP requirements for products covered by subpart H have been met? With respect to any FRA review of a PSP, the Associate Administrator for Safety determines sufficiency. In evaluating the sufficiency of the

railroad's case for the product, the Associate Administrator for Safety considers, as applicable, the factors pertinent to evaluation of risk assessments, listed in § 236.913(g)(2).

(c) What is the scope of a full risk assessment required by this section? A full risk assessment performed under this subpart must address the safety risks affected by the introduction, modification, replacement, or enhancement of a product. This includes risks associated with the previous condition which are no longer present as a result of the change, new risks not present in the previous condition, and risks neither newly created nor eliminated whose nature (probability of occurrence or severity) is nonetheless affected by the change.

(d) What is an abbreviated risk assessment, and when may it be used? An abbreviated risk assessment demonstrates that the resulting MTTHE for the proposed product is greater than the MTTHE for the product or methods performing the same function in the previous condition. This determination must be supported by credible safety analysis sufficient to persuade a reasonable decision-maker that the likelihood of the new product's MTTHE being less than the MTTHE for the system, component, or method performing the same function in the previous condition is very small (remote). An abbreviated risk assessment may be used in lieu of a full risk assessment to show compliance with the performance standard if:

(1) No new hazards are introduced as a result of the change;

(2) Severity of each hazard associated with the previous condition does not increase from the previous condition; and

(3) Exposure to such hazards does not change from the previous condition.

(e) How are safety and risk measured for the full risk assessment? Risk assessment techniques, including both qualitative and quantitative methods are recognized as providing credible and useful results for purposes of this section if they apply the following principles:

(1) Safety levels must be measured using competent risk assessment methods and must be expressed as the total residual risk in the system over its expected life cycle after implementation of all mitigating measures described in the PSP. Appendix B to this part provides criteria for acceptable risk assessment methods. Other methods may be acceptable if demonstrated to the Associate Administrator for Safety to be equally suitable.

(2) For the previous condition and for the life-cycle of the product, risk levels must be adjusted for exposure. Exposure must be expressed as total train miles (and, as applicable, total passenger miles) traveled per year. Severity must identify the total cost, including fatalities, injuries, property damage, and other incidental costs, such as potential consequences of hazardous materials involvement, resulting from preventable accidents associated with the function(s) performed by the system. A railroad may, as an alternative, use a risk metric in which severity is measured strictly in terms of fatalities.

(3) If changes in the physical or operating conditions on the railroad are planned coincident with introduction of or within the expected life cycle of the product subject to review under this subpart, the previous condition shall be adjusted to reflect any associated impact on risk. In particular, the previous condition must be adjusted for assumed implementation of systems necessary to support higher train speeds as specified in § 236.0, as well as track and other changes required to support projected increases in train operations.

§ 236.911 Exclusions.

(a) Does this subpart apply to existing systems? The requirements of this subpart do not apply to products in service as of (the date 60 days after publication of the final rule). Railroads may continue to implement and use these products and components from these existing products.

(b) How will transition cases be handled? Products designed in accordance with subparts A through G of this part which are not in service but are developed or are in the developmental stage prior to (date of publication of final rule) may be excluded upon notification to FRA by (60 days after date of publication of final rule) if placed in service by (3 years after date of publication of final rule). Railroads may continue to implement and use these products and components from these existing products. A railroad may at any time elect to have products that are excluded made subject to this subpart by submitting a PSP as prescribed in § 236.913 and otherwise complying with this subpart.

(c) How are office systems handled? The requirements of this subpart do not apply to existing office systems and future deployments of existing office system technology. However, a subsystem or component of an office system must comply with the requirements of this subpart if it performs safety-critical functions within, or affects the safety performance of, a new or next-generation train control system. For purposes of this section, *office system* means a centralized computer-based train-dispatching and/or central safety computer system.

(d) How are modifications to excluded products handled? Changes or modifications to products otherwise excluded from the requirements of this subpart by this section are not excluded from the requirements of this subpart if they result in a degradation of safety or a material increase in safety-critical functionality.

(e) What other rules apply to excluded products? Products excluded by this section from the requirements of this subpart remain subject to subparts A through G of this part as applicable.

§ 236.913 Notification to FRA of PSPs.

(a) Under what circumstances must a PSP be prepared? A PSP must be prepared for each product covered by this subpart. A joint PSP must be prepared when:

(1) The territory on which a product covered by this subpart is normally subject to joint operations, or is operated upon by more than one railroad; and

(2) The PSP involves a change in method of operation.

(b) Under what circumstances must a railroad submit a petition for approval for a PSP or PSP amendment, and when may a railroad submit an informational filing? Depending on the nature of the proposed product or change, the railroad shall submit either an informational filing or a petition for approval. Submission of a petition for approval is required for PSPs or PSP amendments concerning installation of new or next-generation train control systems. All other actions that result in the creation of a PSP or PSP amendment require an informational filing and will be handled according to the procedures outlined in paragraph (c) of this section. Applications for discontinuance and material modification of signal and train control systems remain governed by parts 235 and 211 of this chapter; and petitions subject to this section may be consolidated with any relevant application for administrative handling.

(c) What are the procedures for informational filings? The following procedures apply to PSPs and PSP amendments which do not require submission of a petition for approval, but rather require an informational filing:

(1) Not less than 180 days prior to planned use of the product in revenue service as described in the PSP or PSP amendment, the railroad shall submit an

informational filing to the Associate Administrator for Safety, FRA, 1120 Vermont Avenue, NW., Mail Stop 25, Washington, DC 20590. The informational filing must provide a summary description of the PSP or PSP amendment, including the intended use of the product, and specify the location where the documentation as described in § 236.917(e)(1) is maintained.

(2) Within 60 days of receipt of the informational filing, FRA:

(i) Acknowledges receipt of the filing;

(ii) Acknowledges receipt of the informational filing and requests further information; or

(iii) Acknowledges receipt of the filing and notifies the railroad, for good cause, that the filing will be considered as a petition for approval as set forth in paragraph (d) of this section, and requests such further information as may be required to initiate action on the petition for approval. Examples of good cause include: The PSP describes a product with unique architectural concepts, the PSP describes a product that uses design or safety assurance concepts considered outside existing accepted practices, and the PSP describes a locomotive-borne product that commingles safety-critical train control processing functions with locomotive operational functions. In addition, good cause would include any instance where the PSP or PSP amendment does not appear to support its safety claim of satisfaction of the performance standard, after FRA has requested further information as provided in paragraph (c)(2)(ii) of this section.

(d) What procedures apply to petitions for approval? The following procedures apply to PSPs and PSP amendments which require submission of a petition for approval:

(1) *Petitions for approval involving prior FRA consultation.* (i) The railroad may file a Notice of Product Development with the Associate Administrator for Safety not less than 30 days prior to the end of the system design review phase of product development and 180 days prior to planned implementation, inviting FRA to participate in the design review process and receive periodic briefings and updates as needed to follow the course of product development. At a minimum, the Notice of Product Development must contain a summary description of the product to be developed and a brief description of goals for improved safety.

(ii) Within 15 days of receipt of the Notice of Product Development, the Associate Administrator for Safety either acknowledges receipt or acknowledges receipt and requests more information.

(iii) If FRA concludes the Notice of Product Development contains sufficient information, the Associate Administrator for Safety determines the extent and nature of the assessment and review necessary for final product approval. FRA may convene a technical consultation as necessary to discuss issues related to the design and planned development of the product.

(iv) Within 60 days of receiving the Notice of Product Development, the Associate Administrator for Safety provides a letter of preliminary review with detailed findings, including whether the design concepts of the proposed product comply with the requirements of this subpart, whether design modifications are necessary to meet the requirements of this subpart, and the extent and nature of the safety analysis necessary to comply with this subpart.

(v) Not less than 60 days prior to use of the product in revenue service, the railroad shall file with the Associate Administrator for Safety a petition for final approval.

(vi) Within 30 days of receipt of the petition for final approval, the Associate Administrator for Safety either acknowledges receipt or acknowledges receipt and requests more information. Whenever possible, FRA acts on the petition for final approval within 60 days of its filing by either granting it or denying it. If FRA neither grants nor denies the petition for approval within 60 days, FRA advises the petitioner of the projected time for decision and conducts any further consultations or inquiries necessary to decide the matter.

(2) *Other petitions for approval.* The following procedures apply to petitions for approval of PSPs for which do not involve prior FRA consultation as described in paragraph (d)(1) of this section.

(i) Not less than 180 days prior to use of a product in revenue service, the railroad shall file with the Associate Administrator for Safety a petition for approval.

(ii) Within 60 days of receipt of the petition for approval, FRA either acknowledges receipt or acknowledges receipt and requests more information.

(iii) Whenever possible, considering the scope, complexity, and novelty of the product or change, FRA acts on the petition for approval within 180 days of its filing by either granting it or denying it. If FRA neither grants nor denies the petition for approval within 180 days, it remains pending, and FRA provides the petitioner with a statement of reasons why the petition has not yet been approved.

(e) What role do product users play in the process of safety review?

(1) FRA will publish in the **Federal Register** periodically a topic list including docket numbers for informational filings and a petition summary including docket numbers for petitions for approval.

(2) Interested parties may submit to FRA information and views pertinent to FRA's consideration of an informational filing or petition for approval. FRA considers comments to the extent practicable within the periods set forth in this section. In a proceeding consolidated with a proceeding under part 235 of this chapter, FRA considers all comments received.

(f) Is it necessary to complete field testing prior to filing the petition for approval? A railroad may file a petition for approval prior to completion of field testing of the product. The petition for approval should additionally include information sufficient for FRA to arrange monitoring of the tests. The Associate Administrator for Safety may approve a petition for approval contingent upon successful completion of the test program contained in the PSP or hold the petition for approval pending completion of the tests.

(g) How are PSPs approved?

(1) The Associate Administrator for Safety grants approval of a PSP when:

(i) The petition for approval has been properly filed and contains the information required in § 236.907;

(ii) FRA has determined that the PSP complies with the railroad's approved RSPP and applicable requirements of this subpart; and

(iii) The risk assessment supporting the PSP demonstrates that the proposed product satisfies the minimum performance standard stated in § 236.909.

(2) The Associate Administrator for Safety considers the following applicable factors when evaluating the risk assessment:

(i) The extent to which recognized standards have been utilized in product design and in the relevant safety analysis;

(ii) The availability of quantitative data, including calculations of statistical confidence levels using accepted methods, associated with risk estimates;

(iii) The complexity of the product and the extent to which it will incorporate or deviate from design practices associated with previously established histories of safe operation;

(iv) The degree of rigor and precision associated with the safety analyses, including the comprehensiveness of the

qualitative analyses, and the extent to which any quantitative results realistically reflect appropriate sensitivity cases;

(v) The extent to which validation of the product has included experiments and tests to identify uncovered faults in the operation of the product;

(vi) The extent to which identified faults are effectively addressed.

(vii) Whether the risk assessment for the previous condition was conducted using the same methodology as that for operation under the proposed condition; and

(viii) If an independent third party assessment is required or is performed at the election of the supplier or railroad, the extent to which the results of the assessment are favorable.

(3) The Associate Administrator for Safety also considers when assessing PSPs the safety requirements for the product within the context of the proposed method of operations, including:

(i) The degree to which the product is relied upon as the primary safety system for train operations; and

(ii) The degree to which the product is overlaid upon and its operation is demonstrated to be independent of safety-relevant rules, practices and systems that will remain in place following the change under review.

(4) As necessary to ensure compliance with this subpart and with the RSPP, FRA may attach special conditions to the approval of the petition.

(5) Following the approval of a petition, FRA may reopen consideration of the petition for cause. Cause for reopening could include such circumstances as credible allegation of error or fraud, assumptions determined to be invalid as a result of in-service experience, or one or more unsafe events calling into question the safety analysis underlying the approval.

(h) Under what circumstances may a third party assessment be required, and by whom may it be conducted?

(1) The PSP must be supported by an independent third party assessment of the product when FRA concludes it is necessary based upon consideration of the following factors:

(i) Those factors listed in paragraphs (g)(2)(i) through (g)(2)(vii) of this section;

(ii) The sufficiency of the assessment or audit previously conducted at the election of a supplier or railroad; and

(iii) Whether applicable requirements of subparts A through G of this part are satisfied.

(2) As used in this section, *independent third party* means a technically competent entity responsible to and compensated by the railroad (or an association on behalf of one or more railroads) that is independent of the supplier of the product. An entity that is owned or controlled by the supplier, that is under common ownership or control with the supplier, or that is otherwise involved in the development of the product is not considered ''independent'' within the meaning of this section. FRA may maintain a roster of recognized technically competent entities as a service to railroads selecting reviewers under this section; however, a railroad is not limited to entities currently listed on any such roster.

(3) The third party assessment must, at a minimum, consist of the activities and result in production of documentation meeting the requirements of Appendix D to this part. However, when requiring an assessment pursuant to this section, FRA specifies any requirements in Appendix D to this part which the agency has determined are not relevant to its concerns and therefore need not be included in the assessment. The railroad shall make the final assessment report available to FRA upon request.

(i) How may a PSP be amended? A railroad may submit an amendment to a PSP at any time in the same manner as the initial PSP. Changes affecting the safety-critical functionality of a product may be made prior to the submission and approval of the PSP amendment as necessary in order to mitigate risk.

(j) How may field testing be conducted prior to PSP approval? (1) Field testing of a product may be conducted prior to the approval of a PSP by the submission of an informational filing by a railroad. The FRA will arrange to monitor the tests based on the information provided in the filing, which must include:

(i) A complete description of the product;

(ii) An operational concepts document;

(iii) A complete description of the specific test procedures, including the measures that will be taken to protect trains and on-track equipment;

(iv) An analysis of the applicability of the requirements of subparts A–G of this part to the product that will not apply during testing;

(v) Date proposed testing to begin;

(vi) The location of the tests; and

(vii) Effect on the current method of operation.

(2) FRA may impose such additional conditions on this testing as may be necessary for the safety of train operations. Exemptions from regulations other than those contained in this part must be requested through waiver procedures in part 211 of this chapter.

§ 236.915 Implementation and operation.

(a) When may a product be placed or retained in service?

(1) Except as stated in paragraphs (a)(2) and (a)(3) of this section, a railroad may operate in revenue service any product 180 days after filing with FRA the informational filing for that product. The FRA filing date can be found in FRA's acknowledgment letter referred to in § 236.913(c)(2).

(2) Except as stated in paragraph (a)(3) of this section, if FRA approval is required for a product, the railroad shall not operate the product in revenue service until after the Associate Administrator for Safety has approved the petition for approval for that product pursuant to § 236.913.

(3) If after product implementation FRA elects, for cause, to treat the informational filing for the product as a petition for approval, the product may remain in use if otherwise consistent with the applicable law and regulations. FRA may impose special conditions for use of the product during the period of review for cause.

(b) How does the PSP relate to operation of the product? Each railroad shall comply with all provisions in the PSP for each product it uses and shall operate within the scope of initial operational assumptions and predefined changes identified by the PSP. Railroads may at any time submit an amended PSP according to the procedures outlined in § 236.913.

(c) What precautions must be taken prior to interference with the normal functioning of a product? The normal functioning of any safety-critical product must not be interfered with in testing or otherwise without first taking measures to provide for safe movement of trains, locomotives, roadway workers and on-track equipment that depend on normal functioning of such product.

(d) What actions must be taken immediately upon failure of a safety-critical component? When any safety-critical product component fails to perform its intended function, the cause must be determined and the faulty component adjusted, repaired, or replaced without undue delay. Until repair of such essential components are completed, a railroad shall take appropriate action as specified in the PSP. See also § 236.917(b).

§ 236.917 Retention of records.

(a) What life cycle and maintenance records must be maintained?

(1) The railroad shall maintain at a designated office on the railroad for the life cycle of the product:

(i) Adequate documentation to demonstrate that the PSP meets the safety requirements of the railroad's RSPP and applicable standards in this subpart, including the risk assessment;

(ii) An Operations and Maintenance Manual, pursuant to § 236.919; and

(iii) Training records pursuant to § 236.923(b).

(2) Results of inspections and tests specified in the PSP must be recorded as prescribed in § 236.110.

(b) What actions must the railroad take in the event of occurrence of a safety-relevant hazard? After the product is placed in service, the railroad shall maintain a database of all safety-relevant hazards as set forth in the PSP and those that had not been previously identified in the PSP. If the frequency of the safety-relevant hazards exceeds the threshold set forth in the PSP (see § 236.907(a)(6)), then the railroad shall:

(1) Report the inconsistency to the FRA Director, Office of Safety Assurance and Compliance, 1120 Vermont Ave., NW, Mail Stop 25, Washington, DC 20590, within 15 days of discovery;

(2) Take prompt countermeasures to reduce the frequency of the safety-relevant hazard(s) below the threshold set forth in the PSP; and

(3) Provide a final report to the FRA Director, Office of Safety Assurance and Compliance, on the results of the analysis and countermeasures taken to reduce the frequency of the safety-relevant hazard(s) below the threshold set forth in the PSP when the problem is resolved.

§ 236.919 Operations and Maintenance Manual.

(a) The railroad shall catalog and maintain all documents as specified in the PSP for the installation, maintenance, repair, modification, inspection, and testing of the product and have them in one Operations and Maintenance Manual, readily available to persons required to perform such tasks and for inspection by FRA.

(b) Plans required for proper maintenance, repair, inspection, and testing of safety-critical products must be adequate in detail and must be made available for inspection by FRA where such products are deployed or maintained. They must identify all software versions, revisions, and revision dates. Plans must be legible and correct.

(c) Hardware, software, and firmware revisions must be documented in the Operations and Maintenance Manual according to the railroad's configuration management control plan and any additional configuration/revision control measures specified in the PSP.

(d) Safety-critical components, including spare equipment, must be positively identified, handled, replaced, and repaired in accordance with the procedures specified in the PSP.

§ 236.921 Training and qualification program, general.

(a) When is training necessary and who must be trained? The railroad shall establish and implement training and qualification programs for products subject to this subpart. These programs must meet the minimum requirements set forth in the PSP and in §§ 236.923 through 236.929 as appropriate, for the following personnel:

(1) Persons whose duties include installing, maintaining, repairing, modifying, inspecting, and testing safety-critical elements of the railroad's products, including central office, wayside, or onboard subsystems;

(2) Persons who dispatch train operations (issue or communicate any mandatory directive that is executed or enforced, or is intended to be executed or enforced, by a train control system subject to this subpart);

(3) Persons who operate trains or serve as a train or engine crew member subject to instruction and testing under part 217 of this chapter, on a train operating in territory where a train control system subject to this subpart is in use; and

(4) Roadway workers whose duties require them to know and understand how a train control system affects their safety and how to avoid interfering with its proper functioning.

(b) What competences are required? The railroad's program must provide training for persons who perform the functions described in paragraph (a) of this section to ensure that they have the necessary knowledge and skills to effectively complete their duties related to processor-based signal and train control equipment.

§ 236.923 Task analysis and basic requirements.

(a) How must training be structured and delivered? As part of the program required by § 236.921, the railroad shall, at a minimum:

(1) Identify the specific goals of the training program with regard to the target population (craft, experience level, scope of work, etc.), task(s) and desired success rate;

(2) Based on a formal task analysis, identify the installation, maintenance, repair, modification, inspection, testing, and operating tasks that must be performed on the railroad's products. This will include the development of failure scenarios and the actions expected under such scenarios;

(3) Develop written procedures for the performance of the tasks identified;

(4) Identify the additional knowledge, skills, and abilities above those required for basic job performance necessary to perform each task;

(5) Develop a training curriculum that includes classroom, simulator, computer-based training (CBT), hands-on, or other formally structured training designed to impart the knowledge, skills, and abilities identified as necessary to perform each task;

(6) Prior to assignment of related tasks, require all persons mentioned in § 236.921(a) and their direct supervisor(s) to successfully complete the training curriculum and pass an examination that covers the product and appropriate rules and tasks for which they are responsible (however, such persons may perform such tasks under the direct onsite supervision of a qualified person prior to completing such training and passing the examination);

(7) Require periodic refresher training at intervals specified in the PSP that includes classroom, simulator, computer-based training (CBT), hands-on, or other formally structured training and testing, except with respect to basic skills for which proficiency is known to remain high as a result of frequent repetition of the task; and

(8) Evaluate the effectiveness of the training program by comparing the desired success rate specified in § 236.923(a)(1) with the actual success rate.

(b) What training records are required? The railroad shall retain records which designate persons who are qualified under this section until new designations are recorded or for at least one year after such persons leave applicable service. These records shall be kept in a designated location and available for inspection and replication by FRA.

§ 236.925 Training specific to control office personnel.

Any person responsible for issuing or communicating mandatory directives in territory where products are or will be in use must be trained in the following areas, as applicable:

(a) Instructions concerning the interface between the computer-aided dispatching system and the train control system, with respect to the safe movement of trains and other on-track equipment;

(b) Railroad operating rules applicable to the train control system, including provision for movement and protection of roadway workers, unequipped trains, trains with failed or cut out train control onboard systems, and other on-track equipment; and

(c) Instructions concerning control of trains and other on-track equipment in case the train control system fails, including periodic practical exercises or simulations and operational testing under part 217 of this chapter to ensure the continued capability of the personnel to provide for safe operations under the alternative method of operation.

§ 236.927 Training specific to locomotive engineers and other operating personnel.

(a) What elements apply to operating personnel? Training provided under this subpart for any locomotive engineer or other person who participates in the operation of a train in train control territory must be defined in the PSP and the following elements must be addressed:

(1) Familiarization with train control equipment onboard the locomotive and the functioning of that equipment as part of the system and in relation to other onboard systems under that person's control;

(2) Any actions required of the onboard personnel to enable, or enter data to, the system, such as consist data, and the role of that function in the safe operation of the train;

(3) Sequencing of interventions by the system, including pre-enforcement notification, enforcement notification, penalty application initiation and post-penalty application procedures;

(4) Railroad operating rules applicable to the train control system, including provisions for movement and protection of any unequipped trains, or trains with failed or cut out train control onboard systems and other on-track equipment;

(5) Means to detect deviations from proper functioning of onboard train control equipment and instructions regarding the actions to be taken with respect to control of the train and notification of designated railroad personnel; and

(6) Information needed to prevent unintentional interference with the proper functioning of onboard train control equipment.

(b) How must locomotive engineer training be conducted? Training required under this subpart for a locomotive engineer, together with required records, must be integrated into the program of training required by part 240 of this chapter.

(c) What requirements apply to full automatic operation? The following special requirements apply in the event a train control system is used to effect full automatic operation of the train:

(1) The PSP must identify all safety hazards to be mitigated by the locomotive engineer.

(2) The PSP must address and describe the training required with provisions for the maintenance of skills proficiency. As a minimum, the training program must:

(i) As described in § 236.923(a)(2), develop failure scenarios which incorporate the safety hazards identified in the PSP, including the return of train operations to a fully manual mode;

(ii) Provide training, consistent with § 236.923(a), for safe train operations under all failure scenarios and identified safety hazards that affect train operations;

(iii) Provide training, consistent with § 236.923(a), for safe train operations under manual control; and

(iv) Consistent with § 236.923(a), ensure maintenance of manual train operating skills by requiring manual starting and stopping of the train for an appropriate number of trips and by one or more of the following methods:

(A) Manual operation of a train for a 4-hour work period;

(B) Simulated manual operation of a train for a minimum of 4 hours in a Type I simulator as required; or

(C) Other means as determined following consultation between the railroad and designated representatives of the affected employees and approved by the FRA. The PSP must designate the appropriate frequency when manual operation, starting, and stopping must be conducted, and the appropriate frequency of simulated manual operation.

§ 236.929 Training specific to roadway workers.

(a) How is training for roadway workers to be coordinated with part 214? Training required under this subpart for a roadway worker must be integrated into the program of instruction required under part 214, Subpart C of this chapter (''Roadway Worker Protection''), consistent with task analysis requirements of § 236.923. This training must provide instruction for roadway workers who provide protection for themselves or roadway work groups.

(b) What subject areas must roadway worker training include?

(1) Instruction for roadway workers must ensure an understanding of the role of processor-based signal and train control equipment in establishing protection for roadway workers and their equipment.

(2) Instruction for roadway workers must ensure recognition of processor-based signal and train control equipment on the wayside and an understanding of how to avoid interference with its proper functioning.

11. Add new Appendices B–E to part 236 to part 236 to read as follows:

Appendix B to Part 236—Risk Assessment Criteria

The safety-critical performance of each product for which risk assessment is required under this part must be assessed in accordance with the following criteria or other criteria if demonstrated to the Associate Administrator for Safety to be equally suitable:

(a) How are risk metrics to be expressed?

The risk metric for the proposed product must describe with a high degree of confidence the accumulated risk of a train system that operates over a life cycle of 25 years or greater. Each risk metric for the proposed product must be expressed with an upper bound, as estimated with a sensitivity analysis, and the risk value selected must be demonstrated to have a high degree of confidence.

(b) How does the risk assessment handle interaction risks for interconnected subsystems/components?

The safety-critical assessment of each product must include all of its interconnected subsystems and components and, where applicable, the interaction between such subsystems.

(c) How is the previous condition computed?

Each subsystem or component of the previous condition must be analyzed with a Mean Time To Hazardous Event (MTTHE) as specified subject to a high degree of confidence.

(d) What major risk characteristics must be included when relevant to assessment?

Each risk calculation must consider the total signaling and train control system and method of operation, as subjected to a list of hazards to be mitigated by the signaling and train control system. The methodology requirements must include the following major characteristics, when they are relevant to the product being considered:

(1) Track plan infrastructure;

(2) Total number of trains and movement density;

(3) Train movement operational rules, as enforced by the dispatcher and train crew behaviors;

(4) Wayside subsystems and components; and

(5) Onboard subsystems and components.

(e) What other relevant parameters must be determined for the subsystems and components?

The failure modes of each subsystem and/or component must be determined for the integrated hardware/software (where applicable) as a function of the Mean Times To Failure (MTTF) (expressed as failure laws), failure restoration rates, and the integrated hardware/software coverage of all processor-based subsystems and/or components. Train operating and movement rules, along with components that are layered in order to enhance safety-critical behavior, must also be considered. System safety-critical design for verification and validation documentation must support the risk-oriented assessment and validate the methodology used to arrive at the assessment results.

(f) How are processor-based subsystems/components assessed?

(1) An MTTHE value must be calculated for each processor-based subsystem and component, indicating the safety-critical behavior of the integrated hardware/software subsystem and/or component. The human factor impact must be included in the assessment, whenever applicable, to provide an integrated MTTHE value. The MTTHE calculation must consider the permanent and transient hardware failure rates (hardware, design and software coding errors), coverage of the integrated hardware/software (application, executive and input/output driver software) subsystem or component, phased-interval maintenance, and the restoration rates in response to detected failures.

(2) MTTHE compliance verification and validation must be based on the assessment of the design for verification and validation process, historical performance data, analytical methods and experimental safety-critical performance testing performed on the subsystem or component. The compliance process must be demonstrated to be compliant and consistent with the MTTHE metric and demonstrated to have a high degree of confidence.

(g) How are non-processor-based subsystems/components assessed?

(1) The safety-critical behavior of all non-processor-based components, which are part of a processor-based system or subsystem, must be quantified with an MTTHE metric. The MTTHE assessment methodology must consider the permanent and transient hardware failure rates, phased interval maintenance and fault coverage of each non-processor-based subsystem or component and the restoration rate.

(2) MTTHE compliance verification and validation must be based on the assessment of the design for verification and validation process, historical performance data, analytical methods and experimental safety-critical performance testing performed on the subsystem or component. The non-processor-based quantification compliance must be demonstrated to have a high degree of confidence.

(h) What assumptions must be documented?

(1) The railroad shall document any assumptions regarding the reliability or availability of mechanical, electric, or electronic components. Such assumptions must include Mean Time To Failure (MTTF) projections, as well as Mean Time To Repair (MTTR) projections, unless the risk assessment specifically explains why these assumptions are not relevant to the risk assessment. The railroad shall document these assumptions in such a form as to permit later automated comparisons with in-service experience (e.g., a spreadsheet).

(2) The railroad shall document any assumptions regarding human performance. The documentation shall be in such a form as to facilitate later comparisons with in-service experience.

(3) The railroad shall document any assumptions regarding software defects. These assumptions shall be in a form which permits the railroad to project the likelihood of detecting an in-service software defect. These assumptions shall be documented in such a form as to permit later automated comparisons with in-service experience.

(4) The railroad shall document all of the identified safety-critical fault paths. The documentation shall be in such a form as to facilitate later comparisons with in-service faults.

Appendix C to Part 236—Safety Assurance Criteria and Processes

(a) What is the purpose of this appendix?

This appendix seeks to promote full disclosure of safety risk to facilitate minimizing or eliminating elements of risk where practicable by providing minimum criteria and processes for safety analyses conducted in support of PSPs. The analysis required by this appendix is intended to minimize the probability of failure to an acceptable level, helping to optimize the safety of the product within the limitations of the available engineering science, cost, and other constraints. FRA uses the criteria and processes set forth in this appendix to evaluate analyses, assumptions, and conclusions provided in RSPP and PSP documents. An analysis performed under this appendix must:

(1) Address each area of paragraph (b) of this appendix, explaining how such requirements were satisfied or why they are not relevant, and

(2) Employ a validation and verification process pursuant to paragraph (c) of this appendix.

(b) What categories of safety elements must be addressed?

The designer shall address each of the following safety considerations when designing and demonstrating the safety of products covered by subpart H of this part. In the event that any of these principles are not followed, the PSP shall state both the reason(s) for departure and the alternative(s) utilized to mitigate or eliminate the hazards associated with the design principle not followed.

(1) *Normal operation.* The system (including all hardware and software) must demonstrate safe operation with no hardware failures under normal anticipated operating conditions with proper inputs and within the expected range of environmental conditions. All safety-critical functions must be performed properly under these normal conditions. The safety of the product in the normal operating modes must not depend upon the correctness of actions or procedures used by operating personnel. There must be no hazards that are categorized as unacceptable or undesirable. Hazards categorized as unacceptable must be eliminated by design.

(2) *Systematic failure.* The product must be shown to be free of unsafe systematic failure—those conditions which can be attributed to human error that could occur at various stages throughout product development. This includes unsafe errors in the software due to human error in the software specification, design and/or coding phases; human errors that could impact hardware design; unsafe conditions that could occur because of an improperly designed human-machine interface; installation and maintenance errors; and errors associated with making modifications.

(3) *Random failure.*

(i) The product must be shown to operate safely under conditions of random hardware failure. This includes single as well as multiple hardware failures, particularly in instances where one or more failures could occur, remain undetected (latent) and react in combination with a subsequent failure at a later time to cause an unsafe

operating situation. In instances involving a latent failure, a subsequent failure is similar to there being a single failure. In the event of a transient failure, the system must restart itself without human intervention. Frequency of attempted restarts must be considered in the hazard analysis required by § 236.907(a)(8).

(ii) There shall be no single point failures in the product that can result in hazards categorized as unacceptable or undesirable. Occurrence of single point failures that can result in hazards must be detected and the product must achieve a known safe state before falsely activating any physical appliance.

(iii) If one non-self-revealing failure combined with a second failure can cause a hazard that is categorized as unacceptable or undesirable, then the second failure must be detected and the product must achieve a known safe state before falsely activating any physical appliance.

(4) *Common Mode failure.* Another concern of multiple failure involves common mode failures in which two or more subsystems or components intended to compensate one another to perform the same function all fail by the same mode and result in unsafe conditions. This is of particular concern in instances in which two or more elements (hardware and/or software) are used in combination to ensure safety. If a common mode failure exists, then any analysis performed under this appendix cannot rely on the assumption that failures are independent. Examples include: The use of redundancy in which two or more elements perform a given function in parallel and When one (hardware and/or software) element checks/monitors another element (of hardware or software) to help ensure its safe operation. Common mode failure relates to independence, which must be ensured in these instances. When dealing with the effects of hardware failure, the designer shall address the effects of the failure not only on other hardware, but also on the execution of the software, since hardware failures can greatly affect how the software operates.

(5) *External influences.* The product must be shown to operate safely when subjected to different external influences, including:

(i) Electrical influences such as power supply anomalies/transients, abnormal/improper input conditions (e.g., outside of normal range inputs relative to amplitude and frequency, unusual combinations of inputs) including those related to a human operator, and others such as electromagnetic interference and/or electrostatic discharges;

(ii) Mechanical influences such as vibration and shock; and

(iii) Climatic conditions such as temperature and humidity.

(6) *Modifications.* Safety must be ensured following modifications to the hardware and/or software. All or some of the concerns identified in this paragraph may be applicable depending upon the nature and extent of the modifications.

(7) *Software.* Software faults must not cause hazards categorized as unacceptable or undesirable.

(8) *Closed Loop Principle.* The product design must require positive action to be taken in a prescribed manner to either begin product operation or continue product operation.

(c) What standards are acceptable for verification and validation?

(1) The standards employed for verification and/or validation of products subject to this subpart must be sufficient to support achievement of the applicable requirements of subpart H of this part.

(2) U.S. Department of Defense Military Standard MIL–STD–882C ''System Safety Program Requirements'' (January 19, 1993) is recognized as providing appropriate risk analysis processes for incorporation into verification and validation standards.

(3) The following standards designed for application to processor-based signal and train control systems are recognized as acceptable with respect to applicable elements of safety analysis required by subpart H of this part. All standards listed below must be the latest revision date unless otherwise provided.

(i) IEEE 1483–2000 Standard for the Verification of Vital Functions in Processor-Based Systems Used in Rail Transit Control.

(ii) CENELEC Standards as follows:

(A) EN50126: 1999 Railway Applications: Specification and Demonstration of Reliability, Availability, Maintainability and Safety (RAMS);

(B) EN50128 (July 1998) Railway Applications: Software for Railway Control and Protection Systems (draft);

(C) prENV50129: 1998 Railway Applications: Safety Related Electronic Systems for Signaling (draft); and

(D) EN50155 Railway Applications: Electronic Equipment Used in Rolling Stock.

(iii) ATCS Specification 140 Recommended Practices for Safety and Systems Assurance.

(iv) ATCS Specification 130 Software Quality Assurance.

(v) AAR–AREMA Manual of Recommended Signal Practices, Part 17 (this is an industry, rather than a consensus standard, and must bear the date of adoption).

(vi) Safety of High Speed Ground Transportation Systems. Analytical Methodology for Safety Validation of Computer Controlled Subsystems. Volume II: Development of a Safety Validation Methodology. Final Report September 1995. Author: Jonathan F. Luedeke, Battelle. DOT/FRA/ORD–95/10.2.

(vii) IEC 61508 (International Electrotechnical Commission) Functional Safety of Electrical/Electronic/Programmable/Electronic Safety (E/E/P/ES) Related Systems, Parts 1–7 as follows:

(A) IEC 61508–1 (1998–12) Part 1: General requirements.

(B) IEC 61508–2 (Ed. 1.0BBPUB, draft) Part 2: Requirements.

(C) IEC 61508–3 (1998–12) Part 3: Software requirements.

(D) IEC 61508–4 (1998–12) Part 4: Definitions and abbreviations.

(E) IEC 61508–5 (1998–12) Part 5: Examples of methods for the determination of safety integrity levels.

(F) IEC 61508–6 (Ed. 1.0BBPUB, draft) Part 6: Guidelines on the applications of IEC 61508–2 and –3.

(G) IEC 61508–7 (2000–03) Part 7: Overview of techniques and measures.

(4) Use of unpublished standards, including proprietary standards, is authorized to the extent that such standards are shown to achieve the requirements of this part. However, any such standards shall be available for inspection and replication by FRA and for public examination in any public proceeding before the FRA to which they are relevant.

Appendix D to Part 236—Independent Review of Verification and Validation

(a) What is the purpose of this Appendix?

This appendix provides minimum requirements for independent third-party assessment of product safety verification and validation pursuant to subpart H of this part. The goal of this assessment is to provide an independent evaluation of the product manufacturer's utilization of safety design practices during the product's development and testing phases, as required by the applicable railroad's RSPP, the product PSP, the requirements of subpart H of this part, and any other previously agreed-upon controlling documents or standards.

(b) What general requirements apply to the conduct of third party assessments?

(1) The supplier may request advice and assistance of the reviewer

concerning the actions identified in paragraphs (c) through (g) of this appendix. However, the reviewer should not engage in design efforts in order to preserve the reviewer's independence and maintain the supplier's proprietary right to the product.

(2) The supplier shall provide the reviewer access to any and all documentation that the reviewer requests and attendance at any design review or walkthrough that the reviewer determines as necessary to complete and accomplish the third party assessment. The reviewer may be accompanied by representatives of FRA as necessary, in FRA's judgment, for FRA to monitor the assessment.

(c) What must be done at the preliminary level?

The reviewer shall evaluate with respect to safety and comment on the adequacy of the processes which the supplier applies to the design and development of the product. At a minimum, the reviewer shall compare the supplier processes with acceptable methodology and employ any other such tests or comparisons if they have been agreed to previously with FRA. Based on these analyses, the reviewer shall identify and document any significant safety vulnerabilities which are not adequately mitigated by the supplier's (or user's) processes. Finally, the reviewer shall evaluate the adequacy of the railroad's RSPP, the PSP, and any other documents pertinent to the product being assessed.

(d) What must be done at the functional level?

(1) The reviewer shall analyze the Preliminary Hazard Analysis (PHA) for comprehensiveness and compliance with the railroad's RSPP.

(2) The reviewer shall analyze all Fault Tree Analyses (FTA), Failure Mode and Effects Criticality Analysis (FMECA), and other hazard analyses for completeness, correctness, and compliance with the railroad's RSPP.

(e) What must be done at the implementation level?

The reviewer shall randomly select various safety-critical software modules for audit to verify whether the requirements of the RSPP were followed. The number of modules audited must be determined as a representative number sufficient to provide confidence that all unaudited modules were developed in compliance with the RSPP.

(f) What must be done at closure?

(1) The reviewer shall evaluate and comment on the plan for installation and test procedures of the product for revenue service.

(2) The reviewer shall prepare a final report of the assessment. The report shall be submitted to the railroad prior to the commencement of installation testing and contain at least the following information:

(i) Reviewer's evaluation of the adequacy of the PSP, including the supplier's MTTHE and risk estimates for the product, and the supplier's confidence interval in these estimates;

(ii) Product vulnerabilities which the reviewer felt were not adequately mitigated, including the method by which the railroad would assure product safety in the event of hardware or software failures (i.e. how does the railroad assure that all potentially hazardous failure modes are identified?) and the method by which the railroad addresses comprehensiveness of the product design for the requirements of the operations it will govern (i.e., how does the railroad assure that all potentially hazardous operating circumstances are identified? Who records any deficiencies identified in the design process? Who tracks the correction of these deficiencies and confirms that they are corrected?);

(iii) A clear statement of position for all parties involved for each product vulnerability cited by the reviewer;

(iv) Identification of any documentation or information sought by the reviewer that was denied, incomplete, or inadequate;

(v) A listing of each RSPP procedure or process which was not properly followed;

(vi) Identification of the software verification and validation procedures for the product's safety-critical applications, and the reviewer's evaluation of the adequacy of these procedures;

(vii) Methods employed by product manufacturer to develop safety-critical software, such as use of structured language, code checks, modularity, or other similar generally acceptable techniques; and

(viii) Method by which the supplier or railroad addresses comprehensiveness of the product design which considers the safety elements listed in paragraph (b) of Appendix C to this part.

Appendix E to this Part—Human-Machine Interface (HMI) Design

(a) What is the purpose of this appendix?

The purpose of this appendix is to provide HMI design criteria which will minimize negative safety effects by causing designers to consider human factors in the development of HMIs.

(b) What is meant by ''designer'' and ''operator''?

As used in this section, *designer* means anyone who specifies requirements for and/or designs a system or subsystem for a product subject to subpart H of this part, and ''operator'' means any human who is intended to receive information from, provide information to, or perform repairs or maintenance on a signal or train control product subject to subpart H of this part.

(c) What kinds of human factors issues must designers consider with regard to the general function of a system?

(1) Reduced situation awareness and over-reliance. HMI design must give an operator active functions to perform, feedback on the results of the operator's actions, and information on the automatic functions of the system as well as its performance. The operator must be ''in-the-loop.'' Designers shall consider at minimum the following methods of maintaining an active role for human operators:

(i) The system must require an operator to initiate action to operate the train and require an operator to remain ''in-the-loop'' for at least 30 minutes at a time;

(ii) The system must provide timely feedback to an operator regarding the system's automated actions, the reasons for such actions, and the effects of the operator's manual actions on the system;

(iii) The system must warn operators in advance when they require an operator to take action; and

(iv) HMI design must equalize an operator's workload.

(2) Expectation of predictability and consistency in product behavior and communications. HMI design must accommodate an operator's expectation of logical and consistent relationships between actions and results. Similar objects must behave consistently when an operator performs the same action upon them.

(3) Limited memory and ability to process information.

(i) HMI design must minimize an operator's information processing load. To minimize information processing load, the designer shall:

(A) Present integrated information that directly supports the variety and types of decisions that an operator makes;

(B) Provide information in a format or representation that minimizes the time required to understand and act; and

(C) Conduct utility tests of decision aids to establish clear benefits such as processing time saved or improved quality of decisions.

(ii) Limited Memory. HMI design must minimize the load on an operator's memory.

(A) To minimize short-term memory load, the designer shall integrate data or information from multiple sources into a single format or representation (''chunking'') and design so that three or fewer ''chunks'' of information need to be remembered at any one time.

(B) To minimize long-term memory load, the designer shall design to support recognition memory, design memory aids to minimize the amount of information that must be recalled from unaided memory when making critical decisions, and ensure active processing of the information.

(4) Miscellaneous Human Factors Concerns. System designers shall:

(i) Design systems that anticipate possible user errors and include capabilities to catch errors before they propagate through the system;

(ii) Conduct cognitive task analyses prior to designing the system to better understand the information processing requirements of operators when making critical decisions; and

(iii) Present information that accurately represents or predicts system states.

(d) What kinds of HMI design elements must a designer incorporate in the development of on-board train displays and controls?

(1) *Location of displays and controls.* Designers shall:

(i) Locate displays as close as possible to the controls that affect them;

(ii) Locate displays and controls based on an operator's position;

(iii) Arrange controls to minimize the need for the operator to change position;

(iv) Arrange controls according to their expected order of use;

(v) Group similar controls together;

(vi) Design for high stimulus-response compatibility (geometric and conceptual);

(vii) Design safety-critical controls to require more than one positive action to activate (e.g., auto stick shift requires two movements to go into reverse); and

(viii) Design controls to allow easy recovery from error.

(2) *Information management.* HMI design must:

(i) Display information in a manner which emphasizes its relative importance;

(ii) Comply with the ANSI/HFS 100–1988 standard for minimum resolution of visual displays;

(iii) Design for display luminance of the foreground or background of at least 35 cd/m^2 (the displays should be capable of a minimum contrast 3:1 with 7:1 preferred, and controls should be provided to adjust the brightness level and contrast level);

(iv) Design the interface to display only the information necessary to the user;

(v) Where text is needed, using short, simple sentences or phrases with wording that an operator will understand;

(vi) Use complete words where possible, where abbreviations are necessary, choose a commonly accepted abbreviation or consistent method and select commonly used terms and words that the operator will understand;

(vii) Adopt a consistent format for all display screens by placing each design element in a consistent and specified location;

(viii) Display critical information in the center of the operator's field of view by placing items that need to be found quickly in the upper left hand corner and items which are not time critical in the lower right hand corner of the field of view;

(ix) Group items that belong together;

(x) Design all visual displays to meet human performance criteria under monochrome conditions and add color only if it will help the user in performing a task and use color coding as a redundant coding technique;

(xi) Limit the number of colors over a group of displays to no more than seven;

(xii) Design warnings to match the level of risk or danger with the alerting nature of the signal;

(xiii) With respect to information entry, avoid full QWERTY keyboards for data entry; and

(xiv) Use digital communications for safety-critical messages between the locomotive engineer and the dispatcher.

(e) What kinds of HMI design elements must a designer consider with respect to problem management?

(1) HMI design must enhance an operator's situation awareness. An operator must have access to:

(i) Knowledge of the operator's train location relative to relevant entities;

(ii) Knowledge of type and importance of relevant entities;

(iii) Understanding of the evolution of the situation over time;

(iv) Knowledge of roles and responsibilities of relevant entities; and

(v) Knowledge of expected actions of relevant entities.

(2) HMI design must support response selection and scheduling.

(3) HMI design must support contingency planning.

Issued in Washington, DC on July 16, 2001.

Betty Monro,

Deputy Federal Railroad Administrator.

[FR Doc. 01–19428 Filed 8–9–01; 8:45 am]

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Federal Register

Friday,

August 10, 2001

Part VI

Environmental Protection Agency

Grants for Lead Programs; Notice of Availability of Funds; Notices

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00319; FRL–6796–5]

Solicitation of Applications for Lead-Based Paint Program Grants; Notice of Availability of Funds

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's intent to enter into cooperative agreements with States, Territories, eligible Indian Tribes and Intertribal Consortia, and the District of Columbia to provide financial assistance for purposes of developing and carrying out EPA-authorized lead-based paint programs. These programs and this financial assistance are authorized by section 404(g) of the Toxic Substances Control Act (TSCA). In order for Indian Tribes and Intertribal Consortia to be eligible for financial assistance under this program, the Indian Tribes and Intertribal Consortia must demonstrate that they meet the criteria for treatment as a State. The total amount of FY 2001 funding to be awarded to States, Territories, eligible Indian Tribes and Intertribal Consortia, and the District of Columbia for development and implementation of EPA-authorized lead-based paint programs, and for EPA's direct implementation of such programs for those States, Territories, eligible Indian Tribes and Intertribal Consortia, and the District of Columbia that do not have EPA-authorized programs is $12.5 million. For FY 2001, the Agency is allocating up to $1.5 million of these funds for the Indian Tribes and Intertribal Consortia.

DATES: Applications submitted by States, Territories, and the District of Columbia for financial assistance, identified by docket control number OPPTS–00319, must be received by EPA Regional staff on or before September 10, 2001. Applications submitted by Indian Tribes and Intertribal Consortia for financial assistance, identified by docket control number OPPTS–00319, must be received by EPA Regional staff on or before September 24, 2001.

ADDRESSES: Applications may be submitted by mail, or in some instances electronically. Please follow the detailed instructions provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–00319 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 (7401), Office of Pollution Prevention and Toxics, 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: The appropriate Regional Lead Coordinator listed in Unit I.C. of the **SUPPLEMENTARY INFORMATION**.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to States, Territories, eligible Indian Tribes and Intertribal Consortia, and the District of Columbia to develop and carry out authorized lead-based paint programs under TSCA section 404(g). In order for Indian Tribes and Intertribal Consortia to be eligible for financial assistance under this program, the Indian Tribes or Intertribal Consortia must demonstrate that they meet the criteria at 40 CFR 35.693 for treatment as a State (Refs. 3 and 4). In order for Intertribal Consortia to be eligible for financial assistance under TSCA section 404(g), they must also meet the requirements at 40 CFR 35.504. These eligibility requirements for Indian Tribes and Intertribal Consortia are in addition to the general eligibility requirements discussed in Unit I.D.3. 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, Including Copies of this Document or Other Related Documents?

You may obtain electronic copies of this document 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/.

You may also access this document on the Home Page for the Office of Pollution Prevention and Toxics (OPPT) at http://www.epa.gov/opptintr/lead. Select ''What's New.'' Hard copies of this document are available from the appropriate Regional Lead Coordinator listed in Unit I.C.

C. How and to Whom Do I Submit an Application?

You may submit an application through the mail, or in some instances electronically, to the Regional Lead Coordinator in the appropriate EPA Regional Office. (Note: On a trial basis, some EPA Regional Offices are allowing submission of applications electronically at this time. Please consult with the Regional Lead Coordinator in the appropriate EPA Regional Office to confirm if electronic submission of your application is permitted.) The mailing addresses and contact telephone numbers for these Offices are listed in this unit. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–00319 in the subject line on the first page of your response.

Region I: (Connecticut, Massachusetts, Maine, New Hampshire, Rhode Island, and Vermont), Regional Contact—James Bryson, U.S. Environmental Protection Agency (USEPA) Region I, One Congress St., Suite 1100 (CPT), Boston, MA 02114–0203; telephone number: (617) 918–1524; e-mail address: bryson.james@epa.gov.

Region II: (New York, New Jersey, Puerto Rico, and the Virgin Islands), Regional Contact—Lou Bevilacqua, USEPA Region II, MS-225, 2890 Woodbridge Ave., Edison, NJ 08837; telephone number: (732) 321–6671; e-mail address: bevilacqua.lou@epa.gov.

Region III: (Delaware, Maryland, Pennsylvania, Virginia, West Virginia, and the District of Columbia), Regional Contact—Roberta Riccio, USEPA Region III (3WC33), 1650 Arch St., Philadelphia, PA 19103–2029; telephone number: (215) 814–3107; e-mail address: riccio.roberta@epa.gov.

Region IV: (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee), Regional Contact—Rose Anne Rudd, USEPA Region IV, 61 Forsyth St., SW., Atlanta, GA 30303; telephone number: (404) 562–8998; e-mail address: rudd.roseanne@epa.gov.

Region V: (Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin), Regional Contact—David Turpin, USEPA Region V (DT-8J), 77 W. Jackson Blvd., Chicago, IL 60604; telephone number: (312) 886–7836; e-mail address: turpin.david@epa.gov.

Region VI: (Arkansas, Louisiana, New Mexico, Oklahoma, and Texas), Regional Contact—Jeffrey Robinson, USEPA Region VI, 1445 Ross Ave., 12th Floor, Dallas, TX 75202; telephone number: (214) 665–7577; e-mail address: robinson.jeffrey@epa.gov.

Region VII: (Iowa, Kansas, Missouri, and Nebraska), Regional Contact—

Mazzie Talley, USEPA Region VII, ARTD/RALI, 901 North 5th, Kansas City, KS 66101; telephone number: (913) 551–7518; e-mail address: talley.mazzie@epa.gov.

Region VIII: (Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming), Regional Contact—David Combs, USEPA Region VIII, 999–18th St., Suite 300, Denver, CO 80202; telephone number: (303) 312–6021; e-mail address: combs.dave@epa.gov.

Region IX: (Arizona, California, Hawaii, Nevada, American Samoa, and Guam), Regional Contact—Patricia Norton, USEPA Region IX (CMD-4-2), 75 Hawthorne St., San Francisco, CA 94105; telephone number: (415) 744–1069; e-mail address: norton.patricia@epa.gov.

Region X: (Alaska, Idaho, Oregon, and Washington), Regional Contact—Barbara Ross, USEPA Region X, Solid Waste and Toxics Unit (WCM-128), 1200 Sixth Ave., Seattle, WA 98101; telephone number: (206) 553–1985; e-mail address: ross.barbara@epa.gov.

D. What Should I Consider as I Prepare My Application for EPA?

1. *Purpose and scope*. EPA awards non-matching cooperative agreements under TSCA section 404(g) to States, Territories, eligible Indian Tribes and Intertribal Consortia, and the District of Columbia to develop and carry out authorized lead-based paint programs. The term ''Territory'' includes the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and any other Territory or possession of the United States. Also, hereinafter, the term ''States'' includes the ''District of Columbia.'' In the past, recipients of the grants have used the funds to assist in program development and to prepare for program authorization. EPA intends to continue to support the development and authorization of these programs as well as implementation of authorized programs as budget constraints allow. This Notice has been developed based on the knowledge that some States have received authorization and that several States and Indian Tribes are continuing to develop their programs. This Notice addresses the criteria EPA will consider when evaluating the grant proposals submitted to the Agency.

Under TSCA section 404, EPA authorizes States, Territories, Indian Tribes, and Intertribal Consortia to administer lead-based paint programs in lieu of the corresponding Federal program. These lead-based paint programs are intended to reduce the incidence of childhood lead poisoning by ensuring that individuals conducting lead-based paint activities are properly trained and certified and that renovation contractors provide lead-hazard information to building owners and residents. EPA issued regulations to establish these lead-based paint programs under the authority of TSCA sections 402 and 406. See 40 CFR part 745. The procedures for authorizing States, Territories, Indian Tribes, and Intertribal Consortia to implement lead-based paint programs are found at 40 CFR part 745, subpart Q.

2. *Goal and objectives*. Pursuant to Title IV of TSCA, EPA encourages States, Territories, Indian Tribes, and Intertribal Consortia to seek authorization of their own lead-based paint programs. EPA's goal is to have authorized programs in all States and a large number of Territories, and on a large number of Indian Tribal lands. EPA therefore recommends that parties seek funding through the TSCA Title IV section 404(g) assistance program, which is now being implemented to assist with development and implementation of lead-based paint programs.

Since 1994, EPA has been offering financial assistance under TSCA section 404(g) in the form of cooperative agreements without matching-fund requirements. In the upcoming funding cycle (which is the eighth year of awarding Federal assistance pursuant to TSCA section 404(g)), the Agency will continue to work with eligible applicants to develop cooperative agreements consistent with the objectives critical to the ultimate success of implementation of a national lead program, with the emphasis on State, Territorial, Indian Tribal, and Intertribal Consortia programs. Although EPA's goal is to have authorized programs in all States and a large number of Territories, and on a large number of Indian Tribal lands, the Agency and Congress anticipated that there would be a number of States, Territories, and Indian Tribes that would not seek program authorization. Consistent with authority granted in the Agency's FY 1998 Appropriation Act (Ref. 7), and the provisions contained within, EPA is authorized to use TSCA section 404(g) funds to implement a Federal lead-based paint program for non-authorized States, Territories, and Indian Tribes. See 40 CFR 35.116, effective April 9, 2001, and 40 CFR 35.516, effective April 17, 2001 (Refs. 1, 2, 3, and 4). (Note: Where the Agency has direct implementation responsibilities, EPA cannot provide financial assistance under this grant program to non-authorized States, Territories, Indian Tribes, or Intertribal Consortia to assist the Agency in implementing and enforcing a Federal program under TSCA section 404(h).)

The cooperative agreements must be used to develop and implement authorized programs. States, Territories, Indian Tribes, and Intertribal Consortia that do not have authorized programs may receive cooperative agreement funding, but only for the continued development of lead-based paint programs which will meet the requirements of TSCA Title IV. To receive continued funding, States, Territories, Indian Tribes, and Intertribal Consortia without an authorized program must be making progress toward an authorized program. Therefore, the Regional Offices, as part of their grant oversight responsibilities, will work with the grantees to determine the appropriate amount of continued funding based upon the amount of developmental work to be completed as the grantee makes progress towards authorization. Eligible parties may utilize this grant support in a way that complements and does not duplicate activities for which they already receive or could receive financial assistance from other Federal sources (i.e., the Centers for Disease Control and Prevention (CDC) and the U.S. Department of Housing and Urban Development (HUD)).

This Notice is one of three notices that announce the availability of funds for Indian Tribes and Intertribal Consortia conducting various lead-based paint activities. The specific details regarding the companion notices are described in separate notices published elsewhere in this **Federal Register** issue. The notices are entitled:

a. *Baseline Assessment of Existing Exposure and Risks of Exposure to Lead Poisoning of Native American Children* and

b. *Lead Awareness (Educational) Outreach for Native American Tribes*.

As stated in this unit, Indian Tribes and Intertribal Consortia, as well as all grantees, will not be awarded funds to fund the same activities from more than one source. Although an Indian Tribe may apply to receive grant funding from all three notices, they each have very distinct objectives. The grant program opportunities described in the companion notices may serve as precursors to, but not as an equivalents or supplements to, the TSCA section 404(g) lead-based paint grant program described in this Notice. The TSCA section 404(g) lead-based paint grant program for which funding is provided in this Notice involves infrastructure development for the anticipated implementation of a lead program and

does not include activities (testing for lead in blood, paint, dust, or soil samples, or general outreach and education activities) listed in the companion notices.

Under TSCA, States are required to collect fees to cover certain costs incurred by the program. These fees are considered ''program income,'' which is defined as ''gross income received by a grantee or subgrantee directly generated by a grant supported activity, or earned only as a result of the grant agreement during the grant period.'' See 40 CFR 31.25(b). It includes income from fees for services performed by the recipient. Program income generated by activities supported under TSCA section 404(g) grants may include fees that a State, Territory, Indian Tribe, or Intertribal Consortium charges for training, accreditation, certification, licensing, or other services performed by the lead training and certification programs, as well as fees that are collected which provide for enforcement of standards and regulations. Consequently, States, Territories, Indian Tribes, and Intertribal Consortia must comply with the rules governing ''program income,'' found at 40 CFR 31.25, and use the funds generated by grant supported activities to assist with program operation costs.

3. *Eligibility*. States, Territories, Indian Tribes, and Intertribal Consortia are eligible to apply for financial assistance under this program if they are either implementing an EPA authorized program pursuant to 40 CFR part 745, subpart Q or if they are developing a program that may be authorized in the future. However, funds will be awarded based upon the progress made by the applicant in developing an acceptable program, including implementing regulations. Failure to make satisfactory progress toward program authorization may result in a State, Territory, Indian Tribe, or Intertribal Consortium not receiving funding. The EPA Regional Offices, as part of their grant oversight responsibilities, will have discretion with respect to determining whether sufficient progress is being made by a given State, Territory, Indian Tribe, and/or Intertribal Consortium toward the development and implementation of a program under TSCA Title IV.

States, Territories, Indian Tribes, and Intertribal Consortia may choose to combine TSCA section 404(g) grant funds with other environmental program grants as part of a performance partnership grant (PPG) if the requirements in 40 CFR 35.130 through 35.138 (applies to States) and 40 CFR 35.530 through 35.538 (applies to Indian Tribes and Intertribal Consortia) are adhered to by the grantee. The final rules which promulgated these provisions were published in the **Federal Register** on January 9, 2001 (Ref.1), effective April 9, 2001 (Ref. 2) and January 16, 2001 (Ref. 3), effective April 17, 2001 (Ref. 4).

4. *Authority*. The TSCA Title IV lead-based paint program is a cooperative agreement program administered by EPA under the authority of TSCA section 404(g). Regulations governing these cooperative agreements are found at 40 CFR part 31 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments). Regulations which supplement the EPA general assistance regulations found in 40 CFR part 31 are found at 40 CFR part 35, subpart A (Ref. 1), effective April 9, 2001 (Ref. 2), and subpart B (Ref. 3), effective April 17, 2001 (Ref. 4). Contained within 40 CFR part 35 are specific sections which govern grants and cooperative agreements for the lead-based paint program under TSCA section 404(g); 40 CFR 35.270 through 35.273 (applicable to States, Territories, and the District of Columbia) (Ref. 1), effective April 9, 2001 (Ref. 2), and 40 CFR 35.690 through 35.693 (applicable to Indian Tribes and Intertribal Consortia) (Ref. 3), effective April 17, 2001 (Ref. 4). The EPA Regional Offices administer the TSCA section 404(g) cooperative agreements pursuant to a delegation of authority which permits the 10 EPA Regional Administrators to enter into cooperative agreements with States, Territories, Indian Tribes, and Intertribal Consortia.

5. *Activities to be funded*. This Notice was developed by OPPT in cooperation with the Agency's 10 Regional Offices, to set forth in more detail the required elements of grant agreements funded under TSCA section 404(g), to describe some of the eligible activities that will be considered for funding, and to facilitate and support Regional administration of this program as they work closely with the States, Territories, Indian Tribes, and Intertribal Consortia to develop work plans that reflect both EPA and State, Territory, and Tribal program priorities. EPA's list of eligible grant activities includes activities that are outlined as required elements of authorized lead-based paint programs, including development of enabling legislation and regulations, enforcement components, as well as other items associated with performance reporting. The elements are specified in 40 CFR 745.325 through 745.327, and are repeated in this unit to assist with the development of applicant work plans. This year's list of activities was updated to account for the following regulation changes which will directly impact the authorized programs.

EPA promulgated its final TSCA section 403 lead hazard standards on December 22, 2000. A rule was published in the **Federal Register** on January 5, 2001 (Ref. 5). The TSCA section 403 standards amend the work practice standards for lead-based paint activities found at 40 CFR 745.227. The TSCA section 403 standards amend the TSCA section 402 regulations by establishing clearance standards for dust; limiting reuse of abated soil; adding a requirement for interpreting composite dust clearance samples; and changing risk assessment and clearance sampling requirements to ensure compatibility between sampling results and the TSCA section 403 hazard standards and section 402 clearance standards. Authorized State, Territory, Indian Tribe, and Intertribal Consortium lead-based paint activities programs are required to develop lead hazard standards and clearance standards that are as protective of human health and the environment as the Federal standards pursuant to 40 CFR 745.324, and, as specified in the January 5, 2001, **Federal Register**, these amendments must occur by February 5, 2003, for grantees to maintain their authorization. Therefore, TSCA section 404(g) funds can be utilized by authorized States, Territories, Indian Tribes, and Intertribal Consortia to develop and/or adopt lead hazard standards and clearance standards for lead in soil, dust, and paint.

Another potential regulatory change should be considered by applicants. Pursuant to TSCA section 402(c)(3), EPA is developing a proposed regulation to govern the conduct of renovation and remodeling activities that create lead-based paint hazards. If promulgated, this regulation will amend the existing TSCA section 402 rules for lead-based paint activities. EPA has developed a model renovators training curriculum entitled *Minimizing Lead-Based Paint Hazards During Renovation, Remodeling, and Repainting* (Ref. 6). EPA plans to make this course available, and publicly encourage its use until the renovation and remodeling rule is effective. As in the existing EPA lead-based paint program regulations, States, Territories, Indian Tribes, and Intertribal Consortia will be given the opportunity to seek authorization for a renovation and remodeling activities program. While it will be several years before the regulation is finalized, States, Territories, Indian Tribes, and Intertribal Consortia are encouraged to

begin considering the need for such an authorized program in their jurisdiction. TSCA section 404(g) funds can be utilized to assist in this process.

Although the list is not exhaustive, the following activities are eligible for funding under TSCA section 404(g) if they are in support of developing and implementing lead-based paint programs authorized pursuant to 40 CFR part 745, subpart Q. In addition, the Agency will consider for funding other activities which focus on the development and implementation of authorized programs, such as:

a. Developing and/or adopting lead hazard standards and clearance standards for lead in soil, dust, and paint;

b. Developing and/or enacting enabling legislation;

c. Adopting implementing regulations;

d. Developing a system to document certification of inspectors, risk assessors, supervisors, workers, and project designers;

e. Adjusting or enhancing the appropriate infrastructure to accommodate additional program responsibilities;

f. Maintaining, improving, and/or developing the appropriate infrastructure to successfully administer and enforce a program to ensure that individuals engaged in lead-based paint activities are properly trained, that training programs are accredited, that contractors and firms engaged in such activities are certified;

g. Maintaining, improving, and/or developing the appropriate infrastructure to successfully administer and enforce a program to ensure that renovation contractors provide lead-hazard information to building owners and residents;

h. Overseeing the conduct of certified contractors engaged in lead-based paint activities to ensure that they are conducting their activities according to all applicable regulations, including monitoring inspection, risk assessment, and abatement activities per the authorized program;

i. Overseeing accredited training programs per the authorized program;

j. Developing and/or revising, as needed, work practice standards for the conduct of lead-based paint activities associated with inspections, risk assessments, and abatement;

k. Monitoring compliance with work practice standards or regulations for the conduct of abatement per the authorized program;

l. Implementing the timely training of enforcement inspectors;

m. Implementing lead-based paint compliance assistance programs;

n. Implementing compliance and enforcement inspection sampling techniques;

o. Adopting or developing specific lead-based paint hazard values or standards;

p. Maintaining, improving, and/or developing specific procedures and supporting documentation to carry out the enforcement program as described in an authorized program. Typical activities could include development of administrative or civil action procedures and the associated warning letters, notices of noncompliance, or the equivalent;

q. Maintaining, improving, and/or developing specific procedures and supporting documentation to carry out the tracking of tips and complaints as described in the authorized program. Typical activities could include development of methods of recording the receipt of complaints, referring lead-based paint complaints to appropriate State or local agencies, tracking the follow-up investigation, tracking any enforcement action associated with the complaint, and notifying citizens of the disposition of their complaints;

r. Preparing a report per 40 CFR 745.327(d) and/or 40 CFR part 31, grant reporting requirements, on the applicant's program progress and performance;

s. Developing and/or revising, as needed, the lead-based paint programs, including regulations or procedures for decertification, suspension, revocation or modification of approvals, and certificates;

t. Developing and/or revising, as needed, requirements for the administration of a third-party certification exam;

u. Developing and/or revising, as needed, the lead-based paint programs' authority to enter, for purposes of inspection, and other relevant enforcement authorities;

v. Developing and/or revising, as needed, enforcement remedies, procedures, etc.;

w. Maintaining, improving, and/or developing techniques for targeting lead-based paint activities' inspections;

x. Improving the timeliness of the processing and follow-up of inspection reports and other information generated through enforcement related activities associated with a lead-based paint program;

y. Enhancing the capacity to improve compliance with Lead Program laws, and effectively develop and issue enforcement remedies/responses to violations;

z. Fostering activities that would increase the efficiency of an applicant's program to ensure that individuals engaged in lead-based paint activities are properly trained; that training programs are accredited; and that contractors engaged in such activities are certified. These activities could include initiatives to develop local capacity in low-income and rural areas, to promote increased competition in the regulated community through agreements which permit entities recognized by an outside jurisdiction to operate in the grantees jurisdiction (referred to as ''reciprocity''), and similar efforts.

6. *Award and distribution of funds.* EPA currently expects that up to $12.5 million of FY 2001 appropriated funds will be available during the FY 2001 funding cycle for financial assistance under TSCA section 404(g) for awards to States, Territories, Indian Tribes, and Intertribal Consortia for development and implementation of EPA-authorized lead-based paint programs, and for EPA's direct implementation of programs in States, Territories, and Indian Tribes that do not have EPA authorized programs. Additional TSCA section 404(g) carry-over funds from previous years may also be available from some Regions. For FY 2001 funding, the Agency is setting aside $1.5 million of the $12.5 million for eligible Indian Tribes and Intertribal Consortia. The remaining $11 million plus any available carry-over dollars will be used to fund State, Territorial, and Federal lead-based paint programs. Because of the timing of this Notice, it is likely that the TSCA section 404(g) funds will be not be awarded until late in FY 2001 or early FY 2002.

a. *Financial assistance to Indian Tribes and Intertribal Consortia.* Each Indian Tribe and Intertribal Consortium that submits a qualifying proposal and is making sufficient progress toward the development and/or implementation of an acceptable lead-based paint program, as determined by the EPA Regional Offices, may receive base funding of $50,000. Though Indian Tribes and Intertribal Consortia may submit qualifying proposals, the award of funds will be based upon the applicants progress in developing an acceptable program, including implementing regulations and seeking program authorization from EPA. Failure to make satisfactory progress toward program authorization may result in the Indian Tribe or Intertribal Consortium receiving reduced or no funding. The Regional Offices will have the discretion, as part of their grant oversight responsibilities, to determine

if the progress being made toward program authorization is sufficient to warrant funding. Further distribution of the Indian Tribal and Intertribal Consortia set-aside funds will be dependent upon the number of applicants, the progress that the grantee is making in developing a program, the status of expenditures of previously awarded funds, population, and the relative strength of the proposal. After the closing date for submittal of Indian Tribe and Intertribal Consortium applications specified in this Notice, EPA Headquarters and Regional Offices will consider each of the proposals, and make decisions about the level of funding to be awarded to each of the applicants. Following those decisions, EPA Headquarters will transfer the funds to the Regional Offices for award to the Indian Tribes and Intertribal Consortia. Because of the timing of this Notice, it is likely that the FY 2001 TSCA section 404(g) funds will not be awarded until FY 2002. Indian Tribal and Intertribal Consortia set-aside funds will not be included in the formula funds pool for States and Territories discussed in Unit I.D.6.b.

b. *Financial assistance to States and Territories.* The process used by EPA for determining award funding levels for States and Territories involves two steps. EPA Headquarters first determines, based on various factors discussed in this unit, the funding level that will be made available to each of the EPA Regional Offices for grantee awards in the respective regions. Following distribution of the funds to the EPA Regional Offices, the Regional Offices then make decisions on the actual funding level to be received by each of the grantees.

The Agency currently uses a three-tiered system to implement the process for deciding the amount of FY 2001 cooperative agreement funds that will be distributed to the EPA Regional Offices. This system is designed to provide a base funding level for each qualified applicant and to provide funding for EPA Headquarters and Regional Offices to address direct program implementation responsibilities, while providing funds targeted to areas with the greatest potential lead burden. The system accomplishes this first by providing a discretionary funding set-aside that is used to fund special needs among the grantees; second by providing a base funding set-aside for every potential State and Territorial applicant; and third by providing funding based on a formula that considers the relative lead burden estimated to exist within a State or Territory.

The discretionary funding set-aside involves setting aside $200,000 of funds for each of the 10 EPA Regional Offices (total $2.0 million) for discretionary funding of grantee activities as well as the Regional direct implementation activities. These funds are primarily intended to provide each Region with the means of awarding funds to States and Territories based upon the progress that the grantee is making in developing a program, the overall quality of the program, and/or identified needs. The EPA Regional Offices will also have the discretion to use these dollars to help support the Federal program within the Region.

The base funding set-aside provides a base level of funds for every potential State and Territorial applicant, and where it is necessary for EPA to implement lead-based paint programs in various States and Territories, it provides funds to help support Federal program implementation. Each State that submits a qualifying proposal and is making sufficient progress toward development and implementation of an authorized lead-based paint program may receive a base funding allotment of $100,000. Each Territory that submits a qualifying proposal and is making sufficient progress toward implementation of an acceptable program may receive a $50,000 base. However, base level funding for non-authorized States and Territories may be reduced by the Regional Offices depending on progress made toward the development and/or implementation of acceptable programs. A base level funding of $50,000 for each State and Territory within the given Region which does not submit an application and/or receive a grant under this funding program will be set aside for EPA use to help implement these programs in non-authorized program areas. The base funds set-aside for non-authorized and/or non-participants in the program are apportioned to EPA Regional and EPA Headquarters Offices based upon direct implementation funding needs, and are intended to ensure that EPA has adequate funds to directly implement the lead-based paint programs in non-authorized States, Territories, and Indian Tribes.

Once base and discretionary funding set-asides are accounted for, the remaining State and Territorial funds are set aside for distribution through the third tier of the process which involves allocating funds for every potential State and Territorial applicant based on a formula that considers the relative lead burden estimated to exist within States and Territories. States and Territories whose funding requests exceed their base allotments can be given additional funds (''formula funds'') based upon their relative lead burden, and for this exercise, all 50 States, the District of Columbia, and the Territories are used to calculate the formula distribution. Formula funds determined for all non-authorized States and Territories will be set aside for Federal program implementation, and will also be apportioned to EPA Headquarters offices and EPA Regional Offices based upon direct implementation funding needs.

In calculating the lead burden for the formula rankings, EPA uses readily available data derived from the 1990 Census of Population and Housing (new data is expected out sometime in calendar year 2001 or 2002), along with other data from HUD. The formula uses four factors to generate an estimate of the potential lead problem, or ''lead burden,'' in each State and Territory. Two of these factors, the number of housing units with lead-based paint and the number of children under age 6, express the potential magnitude of the lead problem. The remaining two factors, the percentage of young children in poverty and the percentage of low-income housing units with lead-based paint, express the potential severity of the problem.

In determining formula rankings, each State and Territory is scored independently for each factor, and the four individual factor scores for each of the States and Territories are then summed to obtain an overall score for that applicant (a combined factor score). The combined factor scores of all States and Territories applying for formula funds are then summed, and the percentage of the total sum represented by the individual State's or Territory's score is then identified. The applicant's formula allotment is determined by multiplying the total formula funding by the percentage scores of the individual State or Territory.

After funding levels (base, discretionary, and formula set-asides) are determined for each State and Territory, the funds will be pooled for each Region and transferred in bulk to the respective Regional accounts. This distribution includes formula and base set-aside funds determined for all non-authorized States and Territories, which are apportioned to EPA Headquarters and Regional Offices based upon direct implementation funding needs, and used by the Agency to support the administration and enforcement of lead-based paint programs in all non-authorized areas including Indian Tribal areas. Prior to the Regional distribution, any formula and base funds set-aside for

Federal program implementation which exceed Regional and Headquarters needs will be re-apportioned to the Regional pots of money using information developed as part of the formula process, for distribution to State and Territories.

Following distribution of the funds to the Regional Office accounts, then the second step in the distribution process occurs; Regional Offices determining the actual funding level to be received by each of the grantees. Funding levels per grantee will be determined by the Regional Offices based on the application submitted and may be decreased or increased based on performance and/or by fiscal need which may include an evaluation of the progress that the grantee is making in developing a program, an evaluation of the performance of the grantee in implementing a program, an evaluation of expenditures of previously awarded funds, and/or an evaluation of future funding needs.

7. *Submission requirements.* Applicants are directed to 40 CFR part 35, subpart A (Ref. 1) and subpart B (Ref. 3) for details on the submission requirements for grant applications. To be considered for funding, each application must include the following components listed in 40 CFR 35.104 (applicable to States and Territories) (Ref. 1) or 40 CFR 35.505 (applicable to Indian Tribes and Intertribal Consortia) (Ref. 3):

a. Meet the requirements in 40 CFR part 31, subpart B;

b. Include a proposed work plan that meets the requirements in 40 CFR 35.107 (for States and Territories) or 40 CFR 35.507 (for Indian Tribes or Intertribal Consortia); and

c. Specify the environmental program and the amount of funds requested.

For TSCA section 404(g) funding for Indian Tribes, EPA is soliciting pre-application grant proposals prior to the submittal of the forms and certifications listed in this unit. This pre-application procedure entails the applicants initially submitting only a work plan and a budget. The Agency will use the applicants' work plans and budgets to select programs to be funded under this grant program. After EPA conducts a review of all submitted pre-applications, successful applicants will be contacted and requested to submit the other required documents listed in this unit, such as the ''Application for Federal Assistance Form'' (Standard Form 424 or SF424), and the ''Budget Information: Non-Construction Programs Form'' (SF424A). In addition, as part of the pre-application, Indian Tribes and/or Intertribal Consortia must include all appropriate information to demonstrate that they meet the criteria at 40 CFR 35.693 (Ref. 3) for treatment as a State. In order for Intertribal Consortia to be eligible for financial assistance under TSCA section 404(g), they must include all appropriate information to demonstrate that they meet the requirements at 40 CFR 35.504 (Ref. 1) concerning eligibility.

The following forms and certifications, which are contained in EPA's ''Application Kit for Assistance,'' must be included in all applications:

a. Standard Form 424 (Application for Federal Assistance);

b. Standard Form 424A (Budget Information-Non-Construction Programs);

c. Standard Form 424 B (Assurances-Non-Construction Programs);

d. Standard Form LLL (Disclosure of Lobbying Activities);

e. Certification Regarding Debarment and Suspension;

f. EPA Form 4700-4 (Compliance Review Report Form); and

g. Quality Assurance Statement. Application Kits for Assistance are available from any of EPA's 10 Regional Offices or may be accessed at http://www.epa.gov/region4/grants/grants.htm.

The following regulations may also be helpful to the applicants as they prepare their financial assistance applications: 40 CFR part 7 (Nondiscrimination in Programs Receiving Federal Assistance From the Environmental Protection Agency); 40 CFR part 12 (Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Environmental Protection Agency); 40 CFR part 29 (Intergovernmental Review of Environmental Protection Agency Programs and Activities); and 40 CFR part 32 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants); Clean Air Act and Clean Water Act Ineligibility of Facilities in Performance of Federal Contracts, Grants and Loans).

Where a single State or Territorial agency has been designated as responsible for coordinating lead activities, EPA encourages that agency to apply for funding under TSCA section 404(g). Coordination of federally funded lead activities by a single agency is viewed as conducive to achieving integration of lead activities. Early consultations are recommended between prospective applicants and their EPA Regional Offices. Because TSCA grants will be administered at the Regional level, these consultations can be critical to the success of a project or program, and can also contribute substantially to efficient program operations. As part of the work plan, EPA Regional Offices may ask for additional information that will be useful in evaluating the program such as the status of enabling legislation, a detailed line-item budget with sufficient information to clearly justify costs, a list of work products or deliverables, a schedule for their completion and application for program authorization under TSCA, and a description of any financial assistance received from other Federal sources concerning the lead program. Applicants must also include all appropriate information on program income in accordance with 40 CFR 31.25.

Work plans are to be negotiated between applicants and their Regional Offices to ensure that both EPA, State, Territorial, and Tribal priorities are addressed. Any application from a State, Territory, Indian Tribe, or Intertribal Consortium that is not making sufficient progress toward implementation of an acceptable program will not be funded. Also, any applicant proposing the collection of environmental or health related measurements or data generation must adequately address the requirements of 40 CFR 31.45 relating to quality assurance/quality control. EPA issued final guidance that provides details about EPA's requirements for the preparation of ''quality management plans.'' The finalized document is entitled *EPA Requirements for Quality Management Plans* (EPA QA/R-2, March 2001), and is available from each Regional Office.

8. *Application procedures.* Applications must be submitted to the appropriate EPA Regional Office in duplicate; one copy to the Regional lead program branch and the other to the Regional grants management branch. In the case of electronic applications, if allowed by a particular EPA Regional Office, the applicant should follow the procedures required by the Regional Office for submission of electronic applications. After the formula funding calculations are determined and the funds are transferred to the appropriate EPA Regional account, the Regional Office lead contact person will contact the applicant and discuss the final award allotment. EPA Regional Offices may request the applicant to modify its proposed work plan and cooperative agreement based upon the final cooperative agreement allotment. For Tribal applicants, final negotiations for the award of the grants, including the completion of a final work plan and budget, will be completed after the determination of successful applicants.

9. *Reporting*. Pursuant to 40 CFR 31.40, grantees shall, at a minimum, submit annual performance reports to the appropriate EPA Regional Office. These requirements were approved by the Office of Management and Budget (OMB) under OMB Control Number 2030–0020 (General Administrative Requirement for Assistance Programs). The individual Regional Offices may require that these reports be submitted on a quarterly or semi-annual basis, but not more frequently than quarterly. The specific information contained within the report will include, at a minimum, a comparison of actual accomplishments to the objectives established for the period. Regional Offices may ask for the inclusion of specific data (e.g., providing to EPA-specific address information associated with the abatement notifications that are received by the grantee) as part of the annual performance report from the grantees which may be useful for Agency reporting under the Government Performance and Results Act. It is assumed that any data that is requested to be submitted by the grantee will already have been collected pursuant to the grantee's work plan.

II. What Action is the Agency Taking?

EPA is soliciting applications from States, Territories, Indian Tribes, and Intertribal Consortia for financial assistance for purposes of developing and carrying out EPA-authorized lead-based paint programs. Approximately $12.5 million dollars is available to fund cooperative agreements with States, Territories, Indian Tribes, and Intertribal Consortia for development and implementation of EPA-authorized lead-based paint programs.

III. Statutory Authority and Regulations

EPA is authorized under TSCA section 404(g) to make grants to develop and carry out authorized lead-based paint programs. Regulations governing these cooperative agreements are found at 40 CFR part 31 (http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr31_00.html) and part 35 (http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr35_00.html)..

IV. References

1. USEPA, Grants Administration Division. Environmental Program Grants—State, Interstate, and Local Government Agencies; Final Rule. **Federal Register** (66 FR 1726, 1737, January 9, 2001).

2. USEPA, Grants Administration Division. Environmental Program Grants— State, Interstate, and Local Government Agencies; Final Rule; Delay of Effective Date. **Federal Register** (66 FR 9202, February 7, 2001).

3. USEPA, Grants Administration Division. Environmental Program Grants for Tribes; Final Rule. **Federal Register** (66 FR 3782, 3805, January 16, 2001).

4. USEPA, Grants Administration Division. Environmental Program Grants for Tribes; Final Rule; Delay of Effective Date. **Federal Register** (66 FR 9661, February 9, 2001).

5. USEPA, OPPT. Lead; Identification of Dangerous Levels of Lead; Final Rule. **Federal Register** (66 FR 1206, January 5, 2001) (FRL–6763–5).

6. USEPA, OPPT. Model Training Course; Minimizing Lead-Based Paint Hazards During Renovation, Remodeling, & Painting. Instructor Manual (EPA 747-B-00-005); Student Manual (EPA 747-B-00-06) (September 2000).

7. Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, Public Law 105–65, 111 Stat. 1374.

V. Submission to Congress and the Comptroller General

Grant solicitations such as this are considered rules for the purpose of the Congressional Review Act (CRA). The CRA, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 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**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects

Environmental protection, Grants, Lead, Training and accreditation.

Dated: August 1, 2001.

Susan B. Hazen,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 01–20130 Filed 8–9–01; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00320; FRL–6796–8]

Baseline Assessment of Existing Exposure and Risks of Exposure to Lead Poisoning of Native American Children; Notice of Funds Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is soliciting applications from Indian Tribes for grants to support an Indian Tribe's baseline assessment of existing exposure and risks of exposure to lead poisoning of Tribal children. EPA is awarding grants which will provide approximately $1.5 million to Indian Tribes to support these activities. This Notice describes eligibility, activities, application procedures and requirements, and evaluation criteria.

DATES: All grant applications must be received on or before October 9, 2001.

ADDRESSES: Applications may be submitted by mail. Please follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Acting Director, Environmental Assistance Division (7401), Office of Pollution Prevention and Toxics, 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: Darlene Watford, Program Assessment and Outreach Branch, National Program Chemicals Division (7404), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 260–3989; e-mail address: watford.darlene@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to federally recognized Indian Tribes or Tribal Consortia only. For the purposes of this Notice, a partnership between two or more federally recognized Indian Tribes is considered a consortium. 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, Including Copies of this Document and Other Related Documents?

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/.

You may also access this document at the Office of Pollution Prevention and Toxics Lead Home Page at http://www.epa.govlead. Select ''What's New.''

C. How and To Whom Do I Submit an Application?

Submit grant applications through the U.S. mail to: Darlene Watford, Program Assessment and Outreach Branch, National Program Chemicals Division (7404), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

For overnight/express delivery service, send applications to: Darlene Watford, Program Assessment and Outreach Branch, National Program Chemicals Division (7404), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 401 M St., SW., Room 817 East Tower, Washington, DC 20460.

D. What Should I Consider as I Prepare My Application?

1. *Scope and purpose*. The purpose of these grants is to support the efforts of Indian Tribes to identify children's risks to lead by conducting a baseline assessment of potential lead exposures. As a result of this assessment, Indian Tribes may use the resulting data to evaluate whether there is a need to develop and implement an authorized Tribal lead program (40 CFR 745.324).

2. *Eligibility*. Eligible recipients are any federally recognized Indian Tribes or Tribal Consortiums only. Federally recognized Indian Tribes are listed in the **Federal Register** notice of March 13, 2000 (65 FR 13298–13303). Only one application may be submitted by each Indian Tribe or Tribal Consortia under this Notice. There are no requirements for matching funding under this grant program. There is no requirement that a Indian Tribe provide documentation that it meets the Treatment as a State (TAS) standard.

3. *Activities to be funded*. EPA will provide financial assistance in the form of grants to Indian Tribes or Tribal Consortia to conduct any or all of the following activities:

i. Conduct inspections and risk assessments of Tribal housing and/or child occupied facilities for lead-based paint hazards in pre-1978 Tribal homes. This includes testing and analysis of paint, dust, and soil samples for hazardous lead levels. Inspections and risk assessments may only be conducted by individuals certified and trained by a training program that has been accredited by EPA or an EPA authorized State or Indian Tribe pursuant to 40 CFR 745.225 and 745.324 to provide training for individuals engaged in lead-based paint activities. Analysis of paint, dust, and soil samples must be conducted by a National Lead Laboratory Accreditation Program (NLLAP) recognized laboratory. EPA has established the NLLAP to recognize laboratories that demonstrate the ability to analyze paint chip, dust, or soil samples for lead. NLLAP provides the public with a list of laboratories that have met EPA requirements and demonstrated the capability to accurately analyze paint chip, dust, or soil samples for lead. A current list of NLLAP-recognized laboratories can be obtained by calling the National Lead Information Center at 1–800–424–LEAD.

ii. Conduct blood-lead screening of Tribal children under 6 years of age. For blood-lead screening activities, the focus should be on Tribal children between the ages of 12–36 months because blood-lead levels tend to be highest in this age group, and more children in this age group tend to have blood-lead levels ≥10 µg/dL (micrograms per deciliter). The Center for Disease Control and Prevention's (CDC) recommended level of concern that encourages follow-up activities is 10 µg/dL, with specific actions/interventions recommended at various elevated blood-lead levels. Applicants who collect and analyze blood-lead samples from Tribal children must have the samples analyzed using a Clinical Laboratory Improvement Amendments (CLIA)-certified laboratory. Portable, hand-held blood-lead analyzer may be used but must be operated by a laboratory that is CLIA-certified for moderately complex analysis. CLIA, published in 1992 (42 CFR part 405), is administered by the Centers for Medicare and Medicaid Services (formerly the Health Care Finance Administration). CLIA-certified laboratories must successfully participate in a testing proficiency program that is CLIA-approved. Information regarding CLIA may be downloaded from the Centers for Medicare and Medicaid Services web site at http://www.hcfa.gov/medicaid/clia/cliahome.htm.

iii. Train workers to perform lead inspections and risk assessments. Grant funds may be used for initial, refresher, and apprenticeship training and third party testing for individuals to perform lead inspections and risk assessments. The training must be conducted by a training program that has been accredited by EPA or an EPA authorized State or Indian Tribe pursuant to 40 CFR 745.225 and 745.324 to provide training for individuals engaged in lead-based paint activities.

iv. Compile and summarize demographic data collected from activities listed in Unit I.D.3.i.–iii. In order for Indian Tribes to qualify for other Federal funds for lead activities, sufficient data needs to compiled and well organized. It is strongly recommended that Indian Tribes develop or use an existing data management system (manual or automated) to collect and maintain the data collected during the project, including laboratory results and data on follow-up cases for Tribal children with elevated blood-lead levels. This information may be essential in determining if Indian Tribes have the capacity for a Tribal lead program (40 CFR 745.324) and are eligible for other Federal funding for lead activities. (An existing Tribal tracking system, Tribal Relational Environmental Numeric Health Database System or TRENHDS, may be viewed or downloaded from http://www.bluejaydata.com/trenhds.) It is recommended that the data include: Tribe name and location; an identifier that protects the privacy of the child; age of housing in which the child resides; age of the child (in months); gender; sample media (blood, soil, dust, or paint); date of sample collection; method of sample collection (for blood indicate whether capillary or venous); laboratory analysis method and date; the levels of lead in blood (in µg/dL), soil (in microgram per gram (µg/g)), dust (in microgram per square foot (µg/ft^2)), and paint (in µg/g or microgram per centimeter square (µg/cm^2)); the number of homes where risk assessments or inspections were conducted; the number of paint, dust, and soil samples collected; and possible exposure routes from other sources (such as paint, hobby materials, pottery, parent occupational exposure, special native foods, medications, etc.) for each Tribal child screened.

4. *Project duration*. Projects are expected to be completed within 2 years of award of the grant.

5. *Ineligible costs*. Examples of ineligible costs under this grant, include the following:

i. Buying real property, such as land or buildings;

ii. Lead hazard reduction activities, such as performing interim controls or abatement (as defined in 40 CFR 745.223) of homes or apartments or child-occupied facilities;

iii. Construction activities, such as renovation, remodeling, or building a structure;

iv. Office equipment that costs more than 10% of the amount of the grant, such as a copying machine or a color printer;

v. Analysis equipment in excess of 10% of the amount of the grant;

vi. Case-management costs (e.g., follow-up visits by a doctor or chelation therapy), including treatment for Tribal children with blood-lead levels ≥10 µg/dL. However, EPA is extremely interested in knowing what actions the applicant plans to follow regarding monitoring, education, and/or treatment for children whose blood-lead levels are determined to be elevated (≥10 µg/dL) while screening under this grant. It is important to treat the children who are found to have blood-lead levels ≥10 µg/dL. A description of specific steps and related information for follow-up activities must be included in the work plan section of the application; and

vii. Contractor support in excess of 25% of the amount of the grant award.

6. *Application requirements*. Applicants must submit one original and three double-sided copies of the application (include a return mailing address in the application). Applications must be unbound, stapled or clipped in the upper left-hand corner, on white paper, and with page numbers. The deadline for EPA's receipt of applications is October 9, 2001. Applicants must identify in the application, any funds from other sources (private or public) used to carry-out the grant projects proposed in response to this Notice. If the applicant has conducted, or is currently working on a related project(s), a brief description of those projects, funding sources, primary commitments, and an indication as to whether those commitments were met must be provided in the application. The description should also indicate how the proposed project is different from other funded work conducted by the Indian Tribe(s) or unfunded work conducted by another entity (e.g., Indian Health Service, EPA Superfund Office, etc.), and how the proposed project will not duplicate previous or on-going projects. It is important to note that Indian Tribes will not be awarded funds to conduct the same activities under the grant program described in this Notice and the EPA lead-based paint grant program (TSCA section 404(g)) which is described in a separate notice published elsewhere in this **Federal Register** issue. This Notice is one of three EPA notices that announce the availability of funds to conduct various lead-based paint activities. The specific details regarding the other notices are described in separate **Federal Register** notices entitled:

•*Lead Awareness (Educational) Outreach for Native American Tribes* and

•*Solicitation of Applications for Lead-Based Paint Program Grants*.

Although Indian Tribes may apply to receive grant funding from all three notices, they each have very distinct objectives. The grant program opportunities described in this Notice and the companion notice (''Lead Awareness (Educational) Outreach for Native American Tribes''), may serve as a precursor to, but not as an equivalent or supplement to, the TSCA section 404(g) lead-based paint grant program as described in the ''Solicitation of Applications for Lead-Based Paint Program Grants.'' The TSCA section 404(g) lead-based paint grant program for which funding is also provided, involves infrastructure development for the anticipated implementation of a lead program and does not include the activities (testing for lead in blood, paint, dust, or soil samples, or the general outreach and education activities) listed in this Notice. Indian Tribes may determine from the sample results and data interpretation that they obtain from the grant program described in this Notice, that they have a need to develop a lead-based paint grant program and may apply for TSCA section 404(g) grant funds. Indian Tribes with an EPA approved lead-based paint program may become eligible for other Federal funding opportunities (such as Housing and Urban Development (HUD) and CDC grant programs) for lead activities.

To be considered for funding, applicants must include completed grant forms, certifications, and a work plan.

i. *Grant forms and certifications*. The following forms and certifications, which are contained in EPA's ''Application Kit for Assistance,'' must be included in the application:

a. Standard Form 424 (Application for Federal Assistance);

b. Standard Form 424A (Budget Information-Non-Construction Programs);

c. Standard Form 424B (Assurances-Non-Construction Programs);

d. Standard Form LLL (Disclosure of Lobbying Activities);

e. Certification Regarding Debarment and Suspension;

f. EPA Form 4700-4 (Compliance Review Report Form); and

g. Quality Assurance Statement.

Application Kits for Assistance include items a–g of this unit and are available from any of EPA's 10 Regional Offices listed in this unit or may be accessed at http://www.epa.gov/region4/grants/grants.htm.

Region I: (Connecticut, Massachusetts, Maine, New Hampshire, Rhode Island, and Vermont), Regional Contact—James Bryson, U.S. Environmental Protection Agency (USEPA) Region I, One Congress St., Suite 1100 (CPT), Boston, MA 02114–0203; telephone number: (617) 918–1524; e-mail address: bryson.james@epa.gov.

Region II: (New York, New Jersey, Puerto Rico, and the Virgin Islands), Regional Contact—Lou Bevilacqua, USEPA Region II, MS-225, 2890 Woodbridge Ave., Edison, NJ 08837; telephone number: (732) 321–6671; e-mail address: bevilacqua.lou@epa.gov.

Region III: (Delaware, Maryland, Pennsylvania, Virginia, West Virginia, and the District of Columbia), Regional Contact—Roberta Riccio, USEPA Region III (3WC33), 1650 Arch St., Philadelphia, PA 19103–2029; telephone number: (215) 814–3107; e-mail address: riccio.roberta@epa.gov.

Region IV: (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee), Regional Contact—Rose Anne Rudd, USEPA Region IV, 61 Forsyth St., SW., Atlanta, GA 30303; telephone number: (404) 562–8998; e-mail address: rudd.roseanne@epa.gov.

Region V: (Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin), Regional Contact—David Turpin, USEPA Region V (DT-8J), 77 W. Jackson Blvd., Chicago, IL 60604; telephone number: (312) 886–7836; e-mail address: turpin.david@epa.gov.

Region VI: (Arkansas, Louisiana, New Mexico, Oklahoma, and Texas), Regional Contact—Jeffrey Robinson, USEPA Region VI, 1445 Ross Ave., 12th Floor, Dallas, TX 75202; telephone number: (214) 665–7577; e-mail address: robinson.jeffrey@epa.gov.

Region VII: (Iowa, Kansas, Missouri, and Nebraska), Regional Contact—Mazzie Talley, USEPA Region VII, ARTD/RALI, 901 North 5th, Kansas City, KS 66101; telephone number: (913)

551–7518; e-mail address: talley.mazzie@epa.gov.

Region VIII: (Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming), Regional Contact—David Combs, USEPA Region VIII, 999–18th St., Suite 300, Denver, CO 80202; telephone number: (303) 312–6021; e-mail address: combs.dave@epa.gov.

Region IX: (Arizona, California, Hawaii, Nevada, American Samoa, and Guam), Regional Contact—Patricia Norton, USEPA Region IX (CMD-4-2), 75 Hawthorne St., San Francisco, CA 94105; telephone number: (415) 744–1069; e-mail address: norton.patricia@epa.gov.

Region X: (Alaska, Idaho, Oregon, and Washington), Regional Contact—Barbara Ross, USEPA Region X, Solid Waste and Toxics Unit (WCM-128), 1200 Sixth Ave., Seattle, WA 98101; telephone number: (206) 553–1985; e-mail address: ross.barbara@epa.gov.

ii. *Work plan*. The work plan must describe the proposed project. The work plan must be 4–6-typed pages in length (excluding Appendix). One page is one side of a single-spaced typed page. The pages must be letter size (10 or 12 characters per inch (cpi)) and must have margins that are at least 1 inch. The format for the work plan must be organized as outlined as follows:

a. *Introduction*. Title of Project, Table of Contents, and Summary.

b. *Baseline assessment activities*. Include the purpose, goal, and approach of the project. This section should also include a discussion of the separate phases of the project; the criteria for selecting properties to be inspected and/or to have risk assessments performed and children screened; methods to be used for data collection and quality control; and training of individuals to perform lead-based paint evaluation activities.

c. *Project management*. Include a description of staff positions, roles, and responsibilities; a description of experience in or potential to conduct activities described in Unit I.D.6.ii.b.; efforts of partnership and collaboration with other local health agencies; extent of contractor support; schedule for initiation and completion of major activities; and a budget summary.

d. *Appendix*. The appendix must be no more than 10 pages total and follow the same paging and spacing description as provided in this outline.

i. Resumes of key personnel. Include title, description, and reference name with phone number for work on previous or current grants or contracts with the Federal Government within the last 5 years.

ii. Letters of support from Tribal representatives (for consortium of Indian Tribes). Include a letter or resolution from Tribal Council or Chairperson showing support for and commitment to the project. (If it is not possible to obtain a letter/resolution from the Tribal Council or Chairperson to submit with your application, an interim letter of explanation must be included with the application. The letter/resolution will still be required prior to award of the grant.

iii. Related projects. Include detailed information on other lead-based paint or lead related activities (if applicable).

7. *Funding*. Applicants may receive grants of up to $75,000. Grant applications for amounts greater than $75,000 may be issued in cases where the size of the Tribal population served is greater than average or where the Indian Tribe is represented by a Tribal Consortium. Final distribution of the funds will be dependent upon the number of qualified applicants, Tribal populations served by each grant, and other factors, as deemed appropriate by EPA (i.e., the evaluation criteria as stated in Unit I.D.9.). Indian Tribes may use a portion of the grant funds for contractor support for these activities (i.e., training providers, consultants, etc.); however, contractor support may not account for more than 25% of the amount of the grant.).

8. *Post-award requirements*. EPA has quality assurance requirements that must be addressed for sampling under this grant. These requirements are addressed in a Quality Assurance Project Plan (QAPjP) which the grantee must submit to EPA after the grant is awarded. The QAPjP must be approved by EPA before any samples are collected. Once approved, the grantee must follow the plan.

QAPjP requirements are stated in the document ''EPA Requirements for Quality Assurance Plans'' (EPA QA/R5). Guidance for the development of QAPjPs can be found in the EPA document ''Guidance for Quality Assurance Project Plans'' (EPA QA/G5). Copies of the quality assurance documents discussed in this unit and other related documents may be down loaded from the EPA Quality Assurance Division web site at http://es.epa.gov/ncerqa/qa/index.html.

To simplify the approval process, a QAPjP template has been developed by EPA specifically for Indian Tribes wishing to respond to this Notice. Applicants may insert information in the template where indicated by italicized print. Applicants may obtain a copy of this specially designed template for this project entitled, *QAPjP Template for Lead Baseline Assessment of Indian Tribes*, from the general information contact listed under **FOR FURTHER INFORMATION CONTACT**, or may download it from the EPA/OPPT web site at http://www.epa.gov/lead. The template follows the EPA QAPP requirements as stated in the document ''EPA Requirements for Quality Assurance Plans'' (EPA QA/R5).

The grantee must provide EPA with progess reports at the end of each quarter.

9. *Evaluation criteria*. EPA will review all applications for quality, strength, and completeness against the following criteria. The Agency will use the applications to select projects to be funded under this grant program. The maximum rating score of an application is 100 points.

i. *General (20 points)*. The applicant's overall description of implementing the Tribal Lead Baseline Assessment program must address the goals of this Notice of funding availability (NOFA) as detailed in Unit I.D.1. It must include reasonable and attainable goals and an approach that is clearly detailed. The applicant must describe how the effectiveness of the project will be determined. The applicant must provide detailed information on all lead-based paint or lead-related activities for which the Indian Tribe has received funding from any Federal, State, or local government.

ii. *Baseline Assessment activities (40 points)*. The applicant's description of plans to inspect Tribal housing and/or child occupied facilities for lead-based paint hazards; perform blood-lead screening to collect blood-lead level data of Tribal children; perform testing of paint, dust, and soil for hazardous lead levels; train individuals to perform lead inspections and risk assessments; and fund contractor support for these grant activities will be evaluated. The following elements will be specifically evaluated:

a. *Evaluation of Tribal housing*. Description of residential/child occupied properties to be evaluated by lead-based paint inspection and/or risk assessment; identification and selection criteria of evaluation sites; description of methods used to reach Tribal population regarding lead paint inspections and/or risk assessment efforts; description of inspection, sampling, and analysis procedures; qualifications of inspection personnel; description of reporting and risk assessment procedures.

b. *Blood-lead screening activities*. Description of the sampling, collection, handling, and analysis activities; data collection and tracking system,

including quality control measures; description of the facility/facilities where the blood-lead sampling will occur (i.e., public school, public library, health department facility, clinic, private building, mobile van, etc.); estimated number and a percentage estimate of the number of Tribal children to be screened in the project. Description of the method that will be used to solicit maximum participation of Tribal children; methods (i.e., printing, video taping, collaboration with radio, or television, etc.) to be used to reach the Indian population regarding the blood-lead screening effort; efforts to be used to ensure patient confidentiality; and a description of how the CLIA standards will be met.

c. *Testing of paint, dust, and soil.* Description of the sampling, collection, handling, and analysis activities; description of the data that will be collected, tracked, and reported to EPA; quality control measures implemented, and a description of how NLLAP-recognized laboratories will be used for analysis.

d. *Training.* Use of EPA, State, or Tribal approved training curriculum for risk assessments and inspections and use of certified inspectors and/or risk assessors trained in lead-based paint evaluation activities.

iii. *Project management (30 points).* The applicant should describe the staff positions, roles and responsibilities, and their qualifications. The following elements will also be evaluated: Resumes of key personnel; applicant's experience in or potential to conduct activities such as those described in the ''Testing of paint, dust, and soil'' section in Unit I.D.9.i.c.; previous experience managing similar projects and availability of references; access to properly trained staff and facilities to conduct the project; schedule for completing the project; and the extent of activities to be performed by a contractor.

iv. *Budget (10 points).* The evaluation will be based on the extent to which the budget (as provided by applicant on SF424A in the application) is reasonable, clear, and consistent with the intended use of the funds. (A brief summary of the budget may be provided in the work plan.) Although matching funds are not required, bonus points will be given to applications indicating financial contributions and/or in-kind services provided to the project.

II. What Action is the Agency Taking?

EPA is soliciting applications from Indian Tribes for grants to support a Indian Tribe's baseline assessment of existing exposure and risks of exposure to lead poisoning of Tribal children. Such assessments may include: Inspecting pre-1978 Tribal housing and/or child occupied facilities for lead-based paint hazards; blood-lead screening to collect blood-lead level data of Tribal children; testing of paint, dust, and soil for hazardous lead levels; training individuals to perform lead inspections and risk assessments; and funding any contractor support necessary for these activities. EPA is awarding grants which will provide approximately $1.5 million for Indian Tribes to perform these activities. Decisions on awarding the grant funds will be made based on the evaluation of the applications.

III. Statutory Authority and Regulation

Section 10 of TSCA, as supplemented by Public Law 106–74, authorizes EPA to award grants for the purpose of conducting research, development, monitoring, education, training, demonstrations, and studies necessary to carry out the purposes of the Act.

IV. Submission to Congress and the Comptroller General

Grant solicitations such as this are considered rules for the purpose of the Congressional Review Act (CRA). The CRA, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 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**. This is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects

Environmental protection, Grants—Indians, Indians, Native Americans, Lead, Blood-lead screening, Lead risk assessments and inspections, Maternal and child health.

Dated: July 31, 2001.

William H. Sanders III,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 01–20131 Filed 8–9–01; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00321; FRL–6796–9]

Lead Awareness (Educational) Outreach for Native American Tribes; Notice of Funds Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is soliciting applications for grants from Indian Tribes to support Tribal lead awareness (educational) outreach activities. EPA is awarding grants which will provide approximately $1 million for Indian Tribes to perform those activities and to encourage Indian Tribes to consider continuing such activities in the future. Decisions on awarding the grant funds will be made based on the evaluation of the applications. This notice describes eligibility, activities, application procedures and requirements, and evaluation criteria.

DATES: All grant applications must be received on or before October 9, 2001.

ADDRESSES: Applications may be submitted by mail. Please follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Acting Director, Environmental Assistance Division (7401), Office of Pollution Prevention and Toxics, 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: Darlene Watford, Program Assessment and Outreach Branch, National Program Chemicals Division (7404), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 260–3989; e-mail address: watford.darlene@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to federally recognized Indian Tribes or Tribal Consortium only. For the purposes of this Notice, a partnership between two or more federally recognized Indian Tribes is considered a consortium. 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, Including Copies of this Document and Other Related Documents?

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/.

You may also access this document at the Office of Pollution Prevention and Toxics Lead Home Page at http://www.epa.govlead. Select ''What's New.''

C. How and To Whom Do I Submit an Application?

Submit grant applications through the U.S. mail to: Darlene Watford, Program Assessment and Outreach Branch, National Program Chemicals Division (7404), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

For overnight/express delivery service, send applications to: Darlene Watford, Program Assessment and Outreach Branch, National Program Chemicals Division (7404), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 401 M St., SW., Room 817 East Tower, Washington, DC 20460.

D. What Should I Consider as I Prepare My Application?

1. *Scope and purpose*. The purpose of these grants is to support Indian Tribes in their efforts to provide lead awareness and education and outreach to children, parents, daycare providers, and legal custodians on the potential health risks associated with lead exposure.

2. *Eligibility*. Eligible recipients are federally recognized Indian Tribes or Tribal Consortia only. Federally recognized Indian Tribes are listed in the **Federal Register** notice of March 13, 2000 (65 FR 13298–13303).

3. *Activities to be funded*. EPA will provide financial assistance in the form of grants to Indian Tribes or Tribal Consortia to launch organized outreach efforts to educate Native American families about the dangers to children of exposure to lead-based paint hazards, distribute educational information, and encourage Native American families to have their children screened for lead and have their homes tested for lead hazards. Activities may include but are not limited to training medical professionals, developing culturally specific lead outreach materials, distributing pamphlets, and establishing an in-home education program to visit the homes of young Tribal children.

Applicants may develop their own outreach materials, however, reproducing pre-existing products is preferred. EPA is aware that many State, Tribal, and local departments of health and environmental protection, as well as advocacy groups and community development groups, have developed useful lead poisoning prevention materials to conduct outreach and awareness (educational) activities. EPA and other Federal agencies have developed, and currently provide, a wide range of outreach materials available from the National Lead Information Center (1–800–424–LEAD). Trained specialists at the Center can help applicants identify specific types of lead awareness materials that already exist and thereby avoid spending resources to recreate these materials. Grant funding may be used to duplicate existing lead outreach materials or to develop and implement a lead poisoning awareness and prevention program. Any new materials developed by the applicant must be consistent with the Federal (EPA, Department of Housing and Urban Development (HUD), and Centers for Disease Control (CDC)) lead hazard awareness and poisoning prevention program(s).

4. *Project duration*. Projects are expected to completed within 2 years of award of the grant.

5. *Ineligible costs*. Examples of ineligible costs under this grant, include the following:

i. Purchasing real property, such as land or buildings;

ii. Lead hazard reduction activities, such as performing interim controls or abatement (as defined in 40 CFR 745.223) of homes or apartments;

iii. Construction activities, such as renovation, remodeling, or building a structure;

iv. Office equipment that costs more than 10% of the amount of the grant, such as a copying machine or a color printer;

v. Analysis equipment in excess of 10% of the amount of the grant;

vi. Case-management costs (i.e., follow-up visits by a doctor or chelation therapy), including treatment for Tribal children with blood-lead levels ≥10 µg/dL (micrograms per deciliter); and

vi. Contractor support in excess of 25% of the amount of the grant award.

6. *Application requirements*. Applicants must submit one original and three double-sided copies of the application (include a return mailing address in the application). Applications must be unbound, clipped or stapled in the upper left-hand corner, on white paper, and with page numbers. The deadline for EPA's receipt of applications is October 9, 2001. Applicants must identify in the application any funds from other sources (private or public) used to carry-out their proposed grant projects (in response to this Notice). If the applicant has conducted, or is currently working on a related project(s), a brief description of those projects, funding sources, primary commitments, and an indication as to whether those commitments were met must be provided in the application in the Appendix section of the work plan. The description should also indicate how the proposed project is different from other funded work conducted by the Indian Tribe(s) or unfunded work conducted by another entity (e.g., Indian Health Service, EPA Superfund Office, etc.), and how the proposed project will not duplicate previous or on-going projects. There are no requirements for matching funding under this grant program. There is no requirement for an Indian Tribe to provide documentation to prove that it meets the Treatment as a State standard. No applicant may receive more than one Federal grant under this Notice for the same project. It is important to note that Indian Tribes will not be awarded funds to conduct the same activities under the grant program described in this Notice and the EPA lead-based paint grant program (TSCA section 404(g)) which is described in a separate **Federal Register** notice published elsewhere in this issue. This Notice is one of three EPA notices that announce the availability of funds to conduct various lead-based paint activities. The specific details regarding the other notices are described in separate **Federal Register** notices entitled:

• *Baseline Assessment of Existing Exposure and Risks of Exposure to Lead Poisoning of Native American Children* and

• *Solicitation of Applications for Lead-Based Paint Program Grants*.

Although Indian Tribes may apply to receive grant funding from all three notices, they each have very distinct objectives. The grant program opportunities described in this Notice and the companion notice (''Baseline Assessment of Existing Exposure and

Risks of Exposure to Lead Poisoning of Native American Children''), may serve as a precursor to, but not as an equivalent or supplement to, the TSCA section 404(g) lead-based paint grant program as described in the notice entitled *Solicitation of Applications for Lead-Based Paint Program Grants*. The TSCA section 404(g) lead-based paint grant program for which funding is also provided, involves infrastructure development for the anticipated implementation of a lead program and does not include the general outreach and education activities as listed in this notice. Indian Tribes may determine from the sample results and data interpretation that they obtain from the Baseline Assessment grant program described in the companion notice (''Baseline Assessment of Existing Exposure and Risks of Exposure to Lead Poisoning of Native American Children''), that they have a need to develop a lead-based paint grant program and may apply for TSCA section 404(g) grant funds. Indian Tribes with an EPA approved lead-based paint program may become eligible for other Federal funding opportunities (such as HUD and CDC grant programs) for lead activities.

i. *Grant forms and certifications*. The following forms and certifications, which are contained in EPA's ''Application Kit for Assistance,'' must be included in the application:

a. Standard Form 424 (Application for Federal Assistance);

b. Standard Form 424A (Budget Information-Non-Construction Programs);

c. Standard Form 424B (Assurances-Non-Construction Programs);

d. Standard Form LLL (Disclosure of Lobbying Activities);

e. Certification Regarding Debarment and Suspension;

f. EPA Form 4700-4 (Compliance Review Report Form); and

g. Quality Assurance Statement. Application Kits for Assistance include items a–g of this unit and are available from any of EPA's 10 Regional Offices listed in this unit or may be accessed at http://www.epa.gov/region4/grants/grants.htm.

Region I: (Connecticut, Massachusetts, Maine, New Hampshire, Rhode Island, and Vermont), Regional Contact—James Bryson, U.S. Environmental Protection Agency (USEPA) Region I, One Congress St., Suite 1100 (CPT), Boston, MA 02114–0203; telephone number: (617) 918–1524; e-mail address: bryson.james@epa.gov.

Region II: (New York, New Jersey, Puerto Rico, and the Virgin Islands), Regional Contact—Lou Bevilacqua, USEPA Region II, MS-225, 2890 Woodbridge Ave., Edison, NJ 08837; telephone number: (732) 321–6671; e-mail address: bevilacqua.lou@epa.gov.

Region III: (Delaware, Maryland, Pennsylvania, Virginia, West Virginia, and the District of Columbia), Regional Contact—Roberta Riccio, USEPA Region III (3WC33), 1650 Arch St., Philadelphia, PA 19103–2029; telephone number: (215) 814–3107; e-mail address: riccio.roberta@epa.gov.

Region IV: (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee), Regional Contact—Rose Anne Rudd, USEPA Region IV, 61 Forsyth St., SW., Atlanta, GA 30303; telephone number: (404) 562–8998; e-mail address: rudd.roseanne@epa.gov.

Region V: (Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin), Regional Contact—David Turpin, USEPA Region V (DT-8J), 77 W. Jackson Blvd., Chicago, IL 60604; telephone number: (312) 886–7836; e-mail address: turpin.david@epa.gov.

Region VI: (Arkansas, Louisiana, New Mexico, Oklahoma, and Texas), Regional Contact—Jeffrey Robinson, USEPA Region VI, 1445 Ross Ave., 12th Floor, Dallas, TX 75202; telephone number: (214) 665–7577; e-mail address: robinson.jeffrey@epa.gov.

Region VII: (Iowa, Kansas, Missouri, and Nebraska), Regional Contact—Mazzie Talley, USEPA Region VII, ARTD/RALI, 901 North 5th, Kansas City, KS 66101; telephone number: (913) 551–7518; e-mail address: talley.mazzie@epa.gov.

Region VIII: (Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming), Regional Contact—David Combs, USEPA Region VIII, 999–18th St., Suite 300, Denver, CO 80202; telephone number: (303) 312–6021; e-mail address: combs.dave@epa.gov.

Region IX: (Arizona, California, Hawaii, Nevada, American Samoa, and Guam), Regional Contact—Patricia Norton, USEPA Region IX (CMD-4-2), 75 Hawthorne St., San Francisco, CA 94105; telephone number: (415) 744–1069; e-mail address: norton.patricia@epa.gov.

Region X: (Alaska, Idaho, Oregon, and Washington), Regional Contact—Barbara Ross, USEPA Region X, Solid Waste and Toxics Unit (WCM-128), 1200 Sixth Ave., Seattle, WA 98101; telephone number: (206) 553–1985; e-mail address: ross.barbara@epa.gov.

ii. *Work plan*. The work plan must describe the proposed project. The work plan must be 4–6 pages (typed) in length (excluding Appendix). One page is one side of a single-spaced typed page. The pages must be letter size (10 or 12 characters per inch (cpi)) and must have margins that are at least 1 inch. The format for the work plan must be organized as outlined in this unit:

a. *Introduction*. Title of Project, Table of Contents, and Summary.

b. *Lead awareness (educational) outreach activities*. This section should include, but not be limited to, the following items/activities: Purpose, goal, and scope of the project; types of lead educational material that will be used and/or reproduced; types, if any, of lead educational materials that will be developed; distribution and delivery plans; and percentage estimate of the number of Tribal families who will receive the lead awareness information.

c. *Project management*. Include a description of staff positions, roles, and responsibilities; a description of the Indian Tribe's experience in or potential to conduct activities described in Unit I.D.6.ii.b.; efforts of partnership and collaboration with other local health agencies, extent of contractor support, schedule for completion, and a budget summary.

d. *Appendix*. The appendix must be no more than 10 pages total and follow the same paging and spacing description as provided in Unit I.D.6.ii.

i. Resumes of key personnel. Include title, description, and reference name with phone number for work on previous or current grants or contracts with the Federal Government within the last 5 years.

ii. Samples of outreach materials. (Optional).

iii. Letters of support from Tribal representatives (for a consortium of Indian Tribes). Include a letter or resolution from the Tribal Council or Chairperson showing support for and commitment to the project. (If it is not possible to obtain a letter/resolution from the Tribal Council or Chairperson to submit with your application, an interim letter of explanation must be included with the application. The letter/resolution will still be required prior to award of grant.)

iv. Related projects. Include detailed information on other lead-based paint or lead related activities (if applicable).

7. *Funding*. The Agency will have discretion in the distribution of the funds. Applicants may receive grants of up to $30,000. Grant applications for amounts greater than $30,000 may be submitted and subsequently awarded in cases where the size of the Tribal population served is greater than average or where the Tribe is represented by a Tribal consortium. Final distribution of the funds will be dependent upon the number of qualified applicants, tribal populations served by

each grant, and other factors, as deemed appropriate by EPA (i.e., evaluation criteria described in Unit I.D.8.).

8. *Evaluation criteria*. EPA will review all applications. Applications will be reviewed for quality, strength, and completeness against the following criteria. The maximum rating score of an application is 100 points.

i. *General (20 points)*. The applicant's description of an educational outreach program must address the goals of this Notice as described in Unit I.D.1. It must include reasonable and attainable goals and an approach that is clearly detailed. The applicant must describe how effectiveness of the project will be determined. The applicant must provide detailed information on all lead-based paint or lead-related activities for which each tribe has received funding from any Federal, State, or local government.

ii. *Outreach (40 points)*. The applicant should fully describe the proposed educational outreach efforts for the Tribal Indian community (or communities). The messages proposed by the applicant should be consistent with EPA, HUD, and CDC lead-based paint program policies, guidelines, regulations, and recommendations. The following elements will be specifically evaluated:

a. Types of existing lead educational material to be used and/or reproduced (i.e., reports, pamphlets, brochures, video tapes, CD ROMs, etc.); types, if any, of lead awareness (educational) outreach materials that will be developed;

b. Method of distribution of materials throughout the Tribal population;

c. How the messages will be delivered, e.g., lecture, written material distribution, one-on-one interviews;

d. Printing, special video taping, advertising (billboards, posters, flyers), collaboration with radio or television, or other methods used to reach the Tribal Indian population regarding the outreach effort;

e. Percentage estimate of the number of Tribal families who will receive the lead awareness information; efforts that will be employed to target hard-to-reach tribal communities to inform families about childhood lead poisoning and screening, if applicable; the number of people/families/medical personnel/etc., who will be reached; and

f. An indication as to whether the proposed outreach materials and activities are suitable for the target audience (i.e., appropriate language comprehension and cultural identification).

iii. *Project management (30 points)*. The applicant should describe positions of staff, roles and responsibilities, and their qualifications. The following elements will also be evaluated:

a. Resumes of key personnel;

b. Applicant's experience in or potential to conduct activities such as those described in Unit I. D.3.;

c. Previous experience managing similar projects and availability of references;

d. Access to properly trained staff and facilities to conduct the project;

e. Schedule for completing major milestones of the project; and

f. The extent of activities to be performed by a contractor.

iv. *Budget and schedule (10 points)*. The evaluation will consider the extent to which the budget (as provided by applicant on SF424A in the application) is reasonable, clear, and consistent with the intended use of the funds. Although matching funds are not required, bonus points will be given to applications indicating financial contributions and/or in-kind services provided to the project.

II. What Action is the Agency Taking?

EPA is soliciting applications from Indian Tribes for grants to support lead awareness (educational) outreach activities for Indian Tribes. EPA is awarding grants which will provide approximately $1 million for Indian Tribes to perform those activities and to encourage Indian Tribes to consider continuing such activities in the future. Decisions on awarding the grant funds will be made based on the evaluation of the applications.

III. Statutory Authority

Section 10 of TSCA, as supplemented by Public Law 106–74, authorizes EPA to award grants for the purpose of conducting research, development, monitoring, education, training, demonstrations, and studies necessary to carry out the purposes of the Act.

IV. Submission to Congress and the Comptroller General

Grant solicitations such as this are considered rules for the purpose of the Congressional Review Act (CRA). The CRA, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 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**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects

Environmental protection, Grants—Indians, Indians, Lead, Maternal and child health.

Dated: July 31, 2001.

William H. Sanders III,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 01–20132 Filed 8–9–01; 8:45 am]

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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.

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S. 468/P.L. 107–23
To designate the Federal building located at 6230 Van Nuys Boulevard in Van Nuys, California, as the ''James C. Corman Federal Building''. (Aug. 3, 2001; 115 Stat. 198)

H.R. 1954/P.L. 107–24
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