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Federal Register
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Monday, October 29, 2001

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 920

[Docket No. FV02–920–1 IFR]

Kiwifruit Grown in California; Relaxation of Pack Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule relaxes the pack requirements prescribed under the California kiwifruit marketing order. The marketing order regulates the handling of kiwifruit grown in California and is administered locally by the Kiwifruit Administrative Committee (Committee). This rule allows handlers to pack more individual pieces of fruit per 8-pound sample for seven size designations, eliminates one size designation, and adds two new size designations. These changes were unanimously recommended by the Committee and are expected to increase grower returns and enable handlers to compete more effectively in the marketplace.

DATES: Effective October 24, 2001. Comments received prior to December 28, 2001 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 205–8938; or e-mail: *moabdocketclerk@usda.gov.* All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours or can be viewed at: *http//www.ams.usda.gov/fv/moab.html.*

FOR FURTHER INFORMATION CONTACT: Rose M. Aguayo, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, fax: (202) 205–8938.

Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, fax: (202) 205–8938 or e-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 920, as amended (7 CFR part 920), regulating the handling of kiwifruit grown in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the USDA ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule allows handlers to pack more individual pieces of fruit per 8-pound sample for seven size designations, eliminates one size designation, and adds two new size designations. These changes were unanimously recommended by the Committee and are expected to increase grower returns and enable handlers to compete more effectively in the marketplace.

Under the terms of the order, fresh market shipments of kiwifruit grown in California are required to be inspected and meet grade, size, maturity, pack, and container requirements. Section 920.52 authorizes the establishment of pack requirements. Section 920.302(a)(4) of the order's administrative rules and regulations outlines pack requirements for fresh shipments of California kiwifruit. Section 920.302(a)(4)(iv) establishes a maximum number of fruit per 8-pound sample for each numerical count size designation for fruit packed in bags, volume fill, or bulk containers.

The amount of kiwifruit supplied to the domestic market by California handlers has declined 40 percent since the 1992–93 season. In addition, grower prices have steadily declined in spite of a continuous increase in the U.S. per capita consumption of kiwifruit. When the order was implemented in 1984, the average Free-on-Board (FOB) value was $1.14 per pound. In 1997–1998, the Committee reviewed FOB values and determined that the average FOB value for the 1992–93 season through the 1997–98 season was $0.55 per pound.

The Committee met on July 8, 1998, and decided to address the confusion in the marketplace and the differences in size designations between California kiwifruit and imported kiwifruit, by revising the numerical counts per size designation. Section 920.302(a)(iv) of the order's administrative rules and regulations was revised by an interim

final rule issued on September 3, 1998 (63 FR 46861).

While this rule increased the number of fruit that could be packed in size designations 30 through 42, experience has shown that further refinement of the California kiwifruit size designations is needed to help California handlers compete more effectively with imported fruit in the marketplace. Handlers want to better meet buyer preferences and buyers generally prefer to purchase containers with a greater number of pieces of fruit in the box. This relaxation of pack requirements will permit handlers to pack more individual pieces of fruit in an 8-pound sample for various size designations, and, thus, better meet buyer preferences.

During the spring of 2001, the production area was hit with a severe frost, heavy winds and hail storms. A shortened bloom period in late spring reduced the pollination of the crop and resulted in less fruit development and growth. Unusually hot temperatures during the summer months added further stress to the vines.

On July 11, 2001, the Committee considered the impact of the severe weather conditions, and estimated the 2001–2002 crop would be 6.5 million tray equivalents. During September the Committee staff conducted a pre-harvest check for sizing, quality, and maturity and found the crop was not sizing as expected. Based on the more recent observations, the field staff estimated that the amount of packable fruit would be approximately 5 million tray equivalents, versus the 6.5 million estimated at the July 11, 2001, meeting.

Because of these factors, the Committee called an emergency meeting on September 19, 2001, to discuss the marketing of the short crop and smaller sized fruit. As previously mentioned, the rules and regulations specify a maximum number of fruit per 8-pound sample for each numerical count size designation for kiwifruit packed in bags, volume fill, or bulk containers. To enable the industry to better market the short 2001 crop, the Committee unanimously recommended relaxing the pack regulations under § 920.302(a)(iv) by increasing the maximum number of fruit per 8-pound sample for size designations 42 through 25, eliminating size designation 21, and adding new size designations 20 and 23. These changes are shown in the following chart:

Size designation	Maximum number of fruit per 8-pound sample	
20		**27**
23		**29**
25	27*	32
27/28	30*	35
30	33*	38
33	36*	43
36	42*	45
39	48*	49
42	53*	54
45		55

*Prior number of fruit per 8-pound sample. New size designations are in bold.

This chart is commonly referred to as the ''Size Designation Chart'' in the industry. Increasing the maximum number of fruit per 8-pound sample will allow some smaller-sized fruit to be packed into a larger-size category. This rule allows one more piece of fruit to be packed per 8-pound sample in size designations 42 and 39, three more pieces of fruit to be packed in size designation 36, seven more pieces of fruit to be packed in size designation 33, and five more pieces of fruit to be packed in size designations 27/28 and 25 respectively.

Additionally, handlers have the option of packing fruit as size designations 23, 20, or 45. This rule reduces the percentage of fruit packed in the 40 series and increases the percentage of fruit packed in the 20 and 30 series. The Committee estimated that increasing the maximum number of fruit per 8-pound sample for size designation 39 would move approximately 600,000 pounds of kiwifruit from the former size designation 42 into the new size 39 designation. Increasing the maximum number of fruit per 8-pound sample for size designation 33 will allow handlers to pack approximately 2,500,000 pounds more kiwifruit into the new size 33 designation. Thus, handlers will be better able to meet the needs of buyers, because kiwifruit sells by the piece, and buyers desire as much fruit in each container as the container can comfortably hold. This change does not affect the minimum size and will not allow fruit currently considered ''undersized'' to be shipped. The Committee further believes that increasing the maximum number of fruit in the 8-pound sample will help reduce the sizing differences between California and imported kiwifruit. This should help California handlers compete more effectively in the marketplace.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 50 handlers of California kiwifruit subject to regulation under the marketing order and approximately 360 growers in the production area. Small agricultural service firms are defined as those whose annual receipts are less than $5,000,000, and small agricultural growers are defined by the Small Business Administration (13 CFR 121.201) as those whose annual receipts are less than $750,000. None of the 50 handlers subject to regulation have annual kiwifruit sales of at least $5,000,000. In addition, 354 of the 360 growers have annual sales less than $500,000. Therefore, a majority of the kiwifruit handlers and growers may be classified as small entities.

This rule allows handlers to pack more individual pieces of fruit per 8-pound sample for seven size designations, eliminates one size designation, and adds two new size designations. These changes were unanimously recommended by the Committee and are expected to increase grower returns and enable handlers to compete more effectively in the marketplace. Authority for this action is provided in § 920.52 of the order.

The Committee unanimously recommended relaxing the pack requirements by increasing the maximum number of fruit per 8-pound sample for size designations 42 through 25, eliminating size designation 21, and adding size designations 20 and 23 as shown in the following chart:

Size designation	Maximum number of fruit per 8-pound sample	
20		**27**
23		**29**
25	27*	32
27/28	30*	35

Size designation	Maximum number of fruit per 8-pound sample	
30	33*	38
33	36*	43
36	42*	45
39	48*	49
42	53*	54
45		55

*Prior number of fruit per 8-pound sample. New size designations are in bold.

This chart is commonly referred to as the ''Size Designation Chart'' in the industry. Increasing the maximum number of fruit per 8-pound sample will allow some smaller-sized fruit to be packed into a larger-size category. This rule allows one more piece of fruit to be packed per 8-pound sample in size designations 42 and 39, three more pieces of fruit to be packed in size designation 36, seven more pieces of fruit to be packed in size designation 33, and five more pieces of fruit to be packed in size designations 27/28 and 25.

Additionally, handlers have the option of packing fruit in size designations 23 and 20, as well as size designation 45. This rule reduces the percentage of fruit packed in the 40 series and increases the percentage of fruit packed in the 20 and 30 series. The Committee estimated that increasing the maximum number of fruit per 8-pound sample for Size 39 would move approximately 600,000 pounds of fruit from the former size designation 42 into the new size 39 designation. U.S. retailers prefer size 33 kiwifruit. Increasing the maximum number of fruit per 8-pound sample for size 33 will allow handlers to pack approximately 2,500,000 pounds more kiwifruit into the new size 33 designation. Thus, handlers will be better able to meet the needs of buyers, because kiwifruit sells by the piece, and buyers desire as much fruit in each container as the container can comfortably hold. This change does not affect the minimum size and will not allow fruit currently considered ''undersized'' to be shipped. Imports from Europe have increased 1,409 percent since 1992–93. During the 2000–01 season approximately 3.2 million tray equivalents were imported from Europe.

The Committee further believes that relaxing the pack requirements to permit more individual pieces of fruit in an 8-pound sample for various size designations will reduce the sizing differences between California and imported kiwifruit. Reducing the size designation differences should help California handlers compete more effectively in the marketplace, as buyers apparently choose to purchase containers with more pieces of fruit per container, and this relaxation permits increases in the number of pieces of fruit in bags, volume-fill, and bulk containers. The Committee has estimated that utilizing the new size designations will yield the California kiwifruit industry $24,407,981 in FOB value versus the $22,442,648 received for the 2000–2001 season. This is an additional $1.9 million in FOB value for the 2001–2002 season.

The Committee wants to maintain the reputation California has established for uniformly packed containers of kiwifruit and believe that these changes will not significantly impact uniformity. The increase in the maximum number of fruit per 8-pound sample is not so significant that consumers or retailers will notice a visual size difference in the fruit being offered. The California Kiwifruit Commission, which administers a State program utilized to promote kiwifruit grown in California, conducted kiwifruit-sizing studies several years ago. These studies show that there is only an average of 3/32-inch to 4/32-inch difference in fruit length between sizes, and 2/32-inch to 3/32-inch difference in fruit width. These differences are indistinguishable to the eye.

These changes address the marketing and shipping needs of the kiwifruit industry and are in the interest of growers, handlers, buyers, and consumers. The impact of these changes is expected to be beneficial to all growers and handlers, regardless of size. There is widespread agreement in the industry to relax the pack requirements.

The Committee considered other alternatives to relaxing packing requirements but determined that these suggestions will not adequately address the industry problems.

One suggestion was to change the minimum size. The Committee did not adopt this suggestion because it believes that lowering the minimum size will diminish the quality image of California kiwifruit.

Another suggestion presented was to leave the size designation chart unchanged. The Committee did not adopt this suggestion because it believes that handlers would benefit from the size designation changes.

After considering these alternatives, the Committee recommended relaxing the pack requirements for seven size designations, eliminating one size designation, and adding two new size designations. Small and large growers and handlers are expected to benefit from this relaxation. It is estimated that grower returns will increase by approximately $1.00 per box.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large kiwifruit handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors.

In addition, the USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the kiwifruit industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the September 19, 2001, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at *http://www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule invites comments on relaxing a pack requirement currently prescribed under the California marketing order. Any comments received prior to finalization of this rule.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule relaxes pack requirements; (2) the 2001–02 harvest is expected to begin during October and this relaxation should cover as much of the harvest as possible; (3) the Committee unanimously recommended these changes to provide handlers more marketing flexibility at a public meeting

and interested parties had an opportunity to provide input; and (4) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 920

Kiwifruit, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 920 is amended as follows:

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 920 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In § 920.302 the table at the end of paragraph (a)(4)(iv) is revised to read as follows:

§ 920.302 Grade, size, pack, and container regulations.

(a) * * *
(4) * * *
(iv) * * *

Size designation	Maximum number of fruit per 8-pound sample
20	27
23	29
25	32
27/28	35
30	38
33	43
36	45
39	49
42	54
45	55

* * * * *

Dated: October 24, 2001.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 01–27205 Filed 10–25–01; 1:46 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM200; Special Conditions No. 25–189–SC]

Special Conditions: Boeing Model 727–100/–200 Series Airplanes; High-Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Boeing Model 727 –100/–200 series airplanes modified by Aircraft Systems & Manufacturing. These modified airplanes will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification incorporates the installation of new electronic air data systems that perform critical functions. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is October 19, 2001. Comments must be received on or before November 28, 2001.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–113), *Docket No. NM200,* 1601 Lind Avenue SW., Renton, Washington 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: *Docket No. NM200.* Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Meghan Gordon, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2138; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay certification of the airplane and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

The FAA has determined that good cause exists for making these special conditions effective upon issuance; however, interested persons are invited to submit such written data, views, or arguments, as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. These special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to these special conditions must include a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. NM200.'' The postcard will be date stamped and returned to the commenter.

Background

On June 5, 2001, Aircraft Systems & Manufacturing, Georgetown, Texas, applied for a Supplemental Type Certificate (STC) to modify Boeing Model 727–100/–200 series airplanes. These airplanes are low-wing, pressurized transport category airplanes with three fuselage-mounted jet engines. They are capable of seating between 120 and 189 passengers, depending upon the model and configuration. The modification incorporates the installation of new electronic air data systems consisting of a single air data computer, electronic altimeter for display of No. 1 altitude data and an air data display unit for display of No. 2 altitude data. These systems have a potential to be vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Aircraft Systems & Manufacturing must show that the Boeing Model 727–100/–200 series airplanes, as modified to include the new electronic air data systems, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A3WE or the applicable regulations in effect on the date of

application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The specific regulations included in the certification basis for the Boeing Model 727–100/–200 series airplanes include Civil Air Regulations (CAR) 4b, as amended by amendment 4b–1 through 4b–11.

If the Administrator finds that the applicable airworthiness regulations (i.e., CAR 4b, as amended) do not contain adequate or appropriate safety standards for the Boeing Model 727–100/–200 series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions, as appropriate, are issued in accordance with § 11.49, as required by §§ 11.28 and 11.29, and become part of the airplane's type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should Aircraft Systems & Manufacturing apply at a later date for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

As noted earlier, the Boeing 727–100/–200 series airplanes modified by Aircraft Systems & Manufacturing will incorporate new electronic air data systems that will perform critical functions. These systems may be vulnerable to high-intensity radiated fields external to the airplane. The current airworthiness standards of part 25 do not contain adequate or appropriate safety standards for the protection of this equipment from the adverse effects of HIRF. Accordingly, these systems are considered to be a novel or unusual design features.

Discussion

There is no specific regulation that addresses requirements for protection of electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved that is equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Boeing Model 727–100/–200 series airplanes modified by Aircraft Systems & Manufacturing. These special conditions will require that these systems, which perform critical functions, must be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters, plus the advent of space and satellite communications coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown in accordance with either paragraph 1 OR 2 below:

1. A minimum threat of 100 volts rms per meter electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated. Both peak and average field strength components from the Table are to be demonstrated.

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz ...	100	100
200 MHz–400 MHz ...	100	100
400 MHz–700 MHz ...	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

The field strengths are expressed in terms of peak of the root-mean-square (rms) over the complete modulation period.

The threat levels identified above are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization Working Group of the Aviation Rulemaking Advisory Committee.

Applicability

As discussed above, these special conditions are applicable to the Boeing Model 727 –100/–200 series airplanes modified by Aircraft Systems & Manufacturing to install new electronic air data systems. Should Aircraft Systems & Manufacturing apply at a later date for a design change approval to modify any other model included on Type Certificate A3WE to incorporate the same novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain design features on the Boeing Model 727 –100/–200 series airplanes modified by Aircraft Systems & Manufacturing to include the new electronic air data systems. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplanes.

The substance of the special conditions for these airplanes has been subjected to the notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions immediately. Therefore, these special conditions are being made effective upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for the Boeing Model 727–100/–200 series airplanes as modified by Aircraft Systems & Manufacturing.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields.

2. For the purpose of these special conditions, the following definition applies: *Critical Functions:* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on October 19, 2001.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–27160 Filed 10–26–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–300–AD; Amendment 39–12481; AD 2001–22–02]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B2 and B4 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Airbus Model A300 B2 and B4 series airplanes. This action requires determining the part and amendment numbers of the variable lever arm (VLA) of the rudder control system to verify the parts were installed using the correct standard, and corrective actions, if necessary. This action is necessary to prevent failure of both spring boxes of the VLA due to corrosion damage, which could result in loss of rudder control and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective November 13, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 13, 2001.

Comments for inclusion in the Rules Docket must be received on or before November 28, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–300–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov.* Comments sent via the Internet must contain ''Docket No. 2001–NM–300–AD'' in the subject line and need not be submitted in triplicate. Comments sent via fax or the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Airbus Model A300 B2 and B4 series airplanes. The DGAC advises that two reports were received which indicated that, during regularly scheduled maintenance, damage to the variable lever arm (VLA) of the rudder control system was found. Further investigation revealed that the VLA spring box mountings, the mounting trunnion, and a tie rod also were damaged. Such damage was attributed to corrosion of the spring boxes. Both affected spring boxes were installed per the pre-vendor service bulletin (VSB) 27–21–1H standard, causing stiff operation of the springs and subsequent damage. Failure of one spring box of the VLA does not affect safety of flight, but failure of both spring boxes could result in loss of rudder control and consequent reduced controllability of the airplane.

Explanation of Relevant Service Information

Airbus has issued All Operators Telex (AOT) A300–27A0196, dated September 20, 2001, which describes procedures for determining the part and amendment numbers of the variable lever arm (VLA) of the rudder control system to verify the spring boxes were installed using the post-VSB 27–21–1H standard, and corrective actions, if necessary. The corrective actions include a detailed visual inspection of the VLA tie rod for damage (bent or ruptured rod) if the part and amendment numbers of the VLA are incorrect, and replacement of any damaged tie rod with a new tie rod.

The DGAC classified this AOT as mandatory and issued French telegraphic airworthiness directive T 2001–447(B), dated September 24, 2001, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

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

Explanation of Requirements of Rule

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

prevent failure of both spring boxes of the variable lever arm (VLA) due to corrosion damage, which could result in jammed rudder pedals, loss of rudder control, and consequent reduced controllability of the airplane. This AD requires a one-time inspection to determine the part number of the VLA of the rudder control system, and follow-on actions, if necessary. The actions are required to be accomplished in accordance with the AOT described previously.

Interim Action

This is considered to be interim action. The manufacturer is gathering data that will enable it to obtain better insight into the nature, cause, and extent of the corrosion damage, and eventually to develop final action to address the unsafe condition. Once final action has been identified, the FAA may consider further rulemaking.

Determination of Rule's Effective Date

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

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall 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.

Submit comments using the following format:

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

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the 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 rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NM–300–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it 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 adding the following new airworthiness directive:

2001–22–02 Airbus Industrie: Amendment 39–12481. Docket 2001–NM–300–AD.

Applicability: Model A300 B2 and B4 series airplanes, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of both spring boxes of the variable lever arm (VLA) due to corrosion damage, which could result in loss of rudder control and consequent reduced controllability of the airplane, accomplish the following:

Inspection/Corrective Actions

(a) Within 10 days after the effective date of this AD: Determine the part and amendment numbers of the VLA of the rudder control system to verify the parts were installed using the correct standard, per Airbus All Operators Telex (AOT) A300–27A0196, dated September 20, 2001.

(1) If the part and amendment numbers shown are not correct, as specified in the AOT, before further flight, do a detailed visual inspection of the VLA tie rod for damage (bent or ruptured rod) per the AOT.

(i) If the tie rod is damaged, replace the VLA with a new VLA per the AOT. Such replacement ends the requirements of this AD.

(ii) If the tie rod is not damaged, no further action is required by this AD.

(2) If the part and amendment numbers shown are correct, no further action is required by this AD.

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

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Incorporation by Reference

(d) The actions shall be done in accordance with Airbus All Operators Telex A300–27A0196, dated September 20, 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 Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in French telegraphic airworthiness directive T 2001–447(B), dated September 24, 2001.

Effective Date

(e) This amendment becomes effective on November 13, 2001.

Issued in Renton, Washington, on October 18, 2001.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–26860 Filed 10–26–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–SW–28–AD; Amendment 39–12479; AD 2001–22–01]

RIN 2120–AA64

Airworthiness Directives; Enstrom Helicopter Corporation Model F–28, F–28A, F–28C, F–28F, 280, 280C, 280F and 280FX Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD) for Enstrom Helicopter Corporation (EHC) Model F–28, F–28A, and 280 helicopters. That AD currently requires inspecting the main rotor shaft (shaft) for a crack or other evidence of damage until appropriately modifying or replacing the shaft with an airworthy shaft at specified time intervals. This amendment adds EHC Model F–28C, F–28F, 280C, 280F, and 280FX helicopters and establishes life limits after which all unmodified shafts must be retired. This amendment requires determining the radius of the shaft fillet, certain visual and dye-penetrant inspections before further flight, and replacing certain main rotor transmissions. This amendment is prompted by the failure of a shaft on an EHC Model F–28A helicopter due to a fatigue crack. The actions specified by this AD are intended to prevent shaft failure and subsequent loss of control of the helicopter.

DATES: Effective November 13, 2001.

Comments for inclusion in the Rules Docket must be received on or before December 28, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2001–SW–28–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9–asw–adcomments@faa.gov.*

FOR FURTHER INFORMATION CONTACT: Joseph McGarvey, Fatigue Specialist, FAA, Chicago Aircraft Certification Office, Airframe and Administrative Branch, 2300 East Devon Ave., Des Plaines, Illinois 60018, telephone (847) 294–7136, fax (847) 294–7834.

SUPPLEMENTARY INFORMATION: On August 16, 1976, the FAA issued AD 76–17–08, Amendment 39–2700 (41 FR 36015, August 26, 1976). On September 16, 1976, the FAA revised that AD issuing AD 76–17–08 R1, Amendment 39–3043 (42 FR 51563, September 29, 1977), for EHC Model F–28, F–28A, and 280 helicopters to establish service time limits after which all unmodified shafts must be replaced. That AD was prompted by FAA's determination, after a review of the service experience, that shaft crack sites may be introduced by allowing the shafts to remain in service for extended periods without modification. That condition, if not corrected, could result in shaft failure and subsequent loss of control of the helicopter.

Since the issuance of that AD, EHC has issued Service Directive Bulletin No. 0094, Revision 1, dated May 31, 2001, specifying certain inspections for a crack in certain shafts due to failure of a shaft on an EHC Model F–28A helicopter.

The FAA and the National Transportation Safety Board (NTSB) investigated the accident involving the failure of a shaft on the EHC Model F28A helicopter. The shaft was designed with a small upper fillet radius of 0.13 inch and failed due to a fatigue crack. Such a shaft design causes a high stress concentration. That, coupled with the occurrence of more frequent than anticipated high flight load conditions, can accelerate the development of fatigue cracks. Preliminary investigation revealed that the shaft installed in the transmission, P/N 28–13101–1-R, failed because of a fatigue crack in the fillet area of the shaft directly beneath the main rotor hub. The FAA concluded, based on its investigation and after reviewing NTSB Report 01–052, dated April 13, 2001, that an inspection should be made of such shafts for cracks before further flight. The FAA determined that since inspections for cracks are imprecise and detection of all existing cracks is uncertain, a shaft with a small radius fillet should be replaced with an airworthy shaft with a large radius fillet on certain model helicopters within 300 hours time-in-service (TIS).

We have identified an unsafe condition that is likely to exist or develop on other helicopters of the same type designs. This AD supersedes AD 76–17–08 and 76–17–08 R1 for EHC Model F–28, F–28A, and 280 helicopters to add Model F–28C, F–28F, 280C, 280F, and 280FX helicopters, to require the following:

- Before further flight, determine the transmission P/N and the radius of the shaft fillet.
- For certain models, replace any transmission having a shaft with a small radius fillet with an airworthy transmission before further flight.
- For certain other models, replace the transmission having a small radius shaft fillet that is not P/N 28–13101–1 or –1–R with an airworthy transmission before further flight.
- For certain models with transmission, P/N 28–13101–1 or –1–R, having a small radius shaft fillet installed:
- Before further flight and at recurring intervals, visually inspect the shaft for a crack. If a crack is suspected,

dye penetrant inspect the shaft before further flight.

• Within 5 hours TIS and thereafter at specified intervals, dye penetrant inspect the shaft for a crack, and polish out specified nicks and scratches.

• If a crack is found or if a nick or scratch exceeds a specified limit, replace the transmission with an airworthy transmission before further flight.

• Within 300 hours TIS or at the next transmission overhaul after the effective date of this AD, whichever occurs first, replace transmission, P/N 28–13101–1 or –1–R, with an airworthy transmission having a large radius shaft fillet. Installing a transmission with a shaft, P/N 28–13104–1–1 or –1–R, Revision K, L, M, N, P, R, or S or P/N 28–13140–1 or –1–R, any revision, is terminating action for the requirements of this AD.

The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability and structural integrity of the helicopter. Therefore, determining the transmission P/N and the shaft fillet radius, conducting the required inspections, and replacing any unairworthy transmission with an airworthy transmission are required before further flight, and this AD must be issued immediately.

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

The FAA estimates that 17 helicopters will be affected by this AD, that it will take approximately 1.4 work hours to accomplish the inspections and that the average labor rate is $60 per work hour. A replacement shaft will cost approximately $3,000 per helicopter, and overhauling the transmission and replacing the shaft will cost approximately $12,000. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $256,428 assuming replacement of the transmission after an inspection of every helicopter affected by this AD.

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 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 mailed comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 2001–SW–28–AD.'' The postcard will be date stamped and returned to the commenter.

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–2700 (41 FR 36015, August 26, 1976) and Amendment 39–3043 (42 FR 51563, September 29, 1977), and by adding a new airworthiness directive (AD), Amendment 39–12479, to read as follows:

2001–22–01 Enstrom Helicopter Corporation: Amendment 39–12479. Docket No. 2001–SW–28–AD. Supersedes AD 76–17–08, Amendment 39–2700, and AD 76–17–08 R1, Amendment 39–3043, Docket 76–GL–15.

Applicability: Model F–28, F–28A, F–28C, F–28F, 280, 280C, 280F, and 280FX helicopters, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent main rotor shaft (shaft) failure and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight, determine the part number (P/N) of the main rotor transmission (transmission) and the radius of the upper fillet of the shaft (see Figure 1).

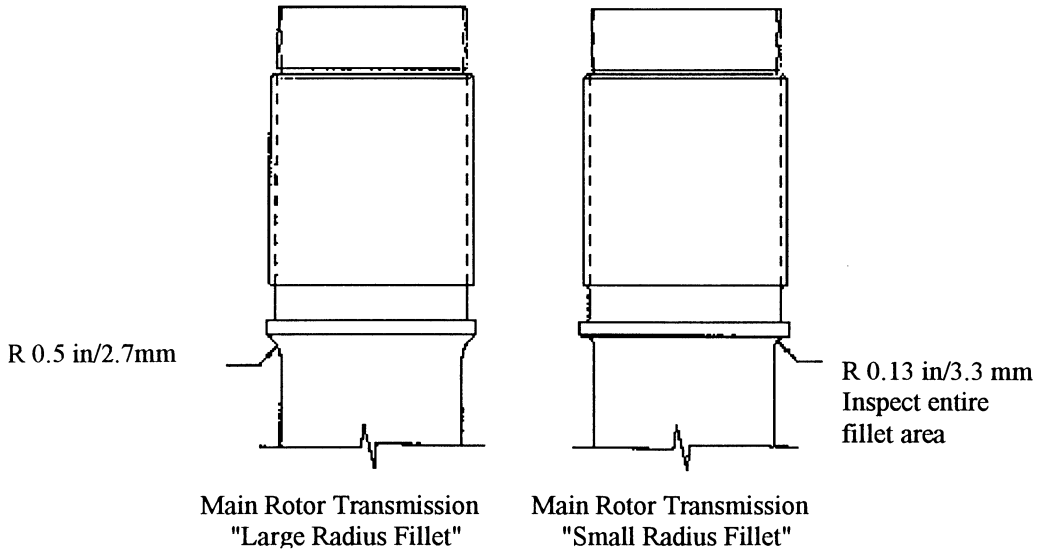


Figure 1. Main Rotor Shaft Inspection

(b) For EHC Model F–28C, F–28F, 280C, 280F, and 280FX helicopters, before further flight, replace any transmission having a small radius shaft fillet with an airworthy transmission having a large radius shaft fillet as specified in Table 1 of this AD.

(c) For EHC Model F–28, F–28A and 280 helicopters:

(1) If the transmission has a shaft with a small radius fillet and the transmission P/N is not listed in Table 1, before further flight, replace the transmission with an airworthy transmission specified in Table 1 of this AD.

TABLE 1.—MAIN ROTOR TRANSMISSION EFFECTIVITY

Description	Transmission P/N	Qty per assy	Models effectivity						
			F–28, F–28A	280	F–28C	280C	F–28F	280F	280FX
(i) Main Rotor Gearbox (0.13 in. radius fillet M/R shaft).	28–13101–1 or –1–R.	1	X	X					
(ii) Main Rotor Gearbox (0.5 in. radius fillet M/R shaft).	28–13101–5 or –5–R*.	1	X	X	X	X			
(iii) Main Rotor Gearbox (0.5 in. radius fillet M/R shaft).	28–13101–8 or –8–R.	1	X	X	X	X	X	X	
(iv) Main Rotor Gearbox (0.5 in. radius fillet M/R shaft).	28–13101–9 or –9–R.	1	X	X	X	X	X	X	
(v) Main Rotor Gearbox (0.5 in. radius fillet, heavy M/R shaft).	28–13101–101 or –101–R*.	1	X	X	X	X			
(vi) Main Rotor Gearbox (0.5 in. radius fillet M/R shaft).	28–13170–1 or –1–R.	1	X	X	X	X	X	X	
(vii) Main Rotor Gearbox (0.5 in. radius fillet M/R shaft).	28–13170–3 or –3–R*.	1	X	X	X	X	X	X	
(viii) Main Rotor Gearbox (0.5 in. radius fillet, heavy M/R shaft).	28–13170–7 or –7–R*.	1	X	X	X	X	X	X	
(ix) Main Rotor Gearbox (0.5 in. radius fillet, heavy M/R shaft, magnetic chip detector, and low rotor RPM pick-up).	28–13101–9 or –9–R*.	1	.....	.....	.....	.....	X	.....	X

Note: ''–R'' indicates an overhauled transmission.
*Transmissions currently available from EHC.

(2) If the installed transmission is P/N 28–13101–1 or –1–R and has a small radius shaft, before further flight and thereafter at intervals not to exceed 25 hours TIS, visually inspect each transmission for a crack in the shaft upper fillet using a 10X or higher magnifying glass.

(i) If a crack is suspected, before further flight, a level II nondestructive inspector must dye-penetrant inspect the shaft using materials approved by MIL–I–25135.

(ii) If the shaft is cracked, before further flight, replace the transmission with an airworthy transmission having a large radius shaft fillet.

(3) If the transmission is P/N 28–13101–1 or –1–R, within 5 hours TIS, and thereafter at intervals not to exceed 100 hours TIS:

(i) Dye-penetrant inspect the shaft upper fillet for a crack, a nick, or a scratch.

(ii) Polish out nicks or scratches less than 0.005-inch deep.

(iii) If the shaft is cracked or has a nick or scratch 0.005 inch or more deep, replace the transmission with an airworthy transmission having a large radius shaft fillet before further flight.

(4) Within 300 hours TIS or at the next overhaul after the effective date of this AD, whichever occurs first, replace transmission, P/N 28–13101–1 or –1–R, with an airworthy transmission having a large radius shaft fillet.

(d) Installing an airworthy transmission with a shaft, P/N 28–13104–1 or –1–R, Revision K, L, M, N, P, R or S, or P/N 28–13140–1 or –1–R, is terminating action for the requirements of this AD.

Note 2: Enstrom Helicopter Corporation Service Directive Bulletin No. 0094, Revision 1, dated May 31, 2001, pertains to the subjet of this AD.

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

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

(f) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished provided an inspection in accordance with paragraph (c)(2) of this AD reveals no crack in the shaft.

(g) This amendment becomes effective on November 13, 2001.

Issued in Fort Worth, Texas, on October 16, 2001.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 01–26965 Filed 10–26–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–348–AD; Amendment 39–12482; AD 2001–22–03]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Bombardier Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 series airplanes, that requires modifying the oxygen flow control valve. This action is necessary to ensure that proper oxygen flow will be available to passengers when needed. This action is intended to address the identified unsafe condition.

DATES: Effective December 3, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 3, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dan Parrillo, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7505; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Bombardier Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 series airplanes was published in the **Federal Register** on August 23, 2001 (66 FR 44322). That action proposed to require modifying the oxygen flow control valve.

Comments

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

Conclusion

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

Cost Impact

The FAA estimates that 150 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. The cost for required parts will be negligible. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $9,000, or $60 per airplane.

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

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is

contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2001–22–03 Bombardier, Inc. (Formerly de Havilland, Inc.): Amendment 39–12482. Docket 2000–NM–348–AD.

Applicability: Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 series airplanes; certificated in any category; as listed in Bombardier Service Bulletin 8–35–19, dated August 17, 2000.

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

Compliance: Required as indicated, unless accomplished previously.

To ensure that proper oxygen flow will be available to passengers when needed, accomplish the following:

Modification

(a) Within 90 days after the effective date of this AD, modify the flow control valve (including removing the selector stop; installing two new screws of a shorter length in the vacated holes; and, for airplanes having a two-position label, replacing the label with a new three-position label having an OFF position). Perform the modification in accordance with Bombardier Service Bulletin 8–35–19, dated August 17, 2000 (Bombardier Modification 8/2989).

Spares

(b) As of the effective date of this AD, no person may install a selector stop having part number 8Z2070 or H85320099 on the flow control valve of any affected airplane.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Incorporation by Reference

(e) The modification shall be done in accordance with Bombardier Service Bulletin 8–35–19, dated August 17, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Canadian airworthiness directive CF–2000–26, dated August 28, 2000.

Effective Date

(f) This amendment becomes effective on December 3, 2001.

Issued in Renton, Washington, on October 19, 2001.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–26953 Filed 10–26–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–220–AD; Amendment 39–12483; AD 2001–22–04]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all Boeing Model 747 series airplanes, that currently requires a one-time inspection of the fuselage skin adjacent to the drag splice fitting to detect cracking, and follow-on actions, if necessary. This amendment requires new repetitive inspections for cracking of the fuselage skin adjacent to the drag splice fitting. This amendment is prompted by reports of fatigue cracking in the fuselage skin and adjacent structure. The actions specified by this AD are intended to detect and correct such cracking, which could result in reduced structural integrity of the fuselage, and consequent rapid depressurization of the airplane.

DATES: Effective December 3, 2001.

The incorporation by reference of Boeing Alert Service Bulletin 747–53A2444, Revision 2, dated May 24, 2001, as listed in the regulations, is approved by the Director of the Federal Register as of December 3, 2001.

The incorporation by reference of Boeing Service Bulletin 747–53A2444, Revision 1, dated June 15, 2000, as listed in the regulations, was approved previously by the Director of the Federal Register as of July 28, 2000 (65 FR 43219, July 13, 2000).

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

FOR FURTHER INFORMATION CONTACT: Rick Kawaguchi, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1153; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 2000–14–04, amendment 39–11813 (65 FR 43219, July 13, 2000), which is applicable to all Boeing Model 747 series airplanes, was published in the **Federal Register** on June 5, 2001 (66 FR 30109). The action proposed to require a one-time inspection of the fuselage skin adjacent to the drag splice fitting to detect cracking, and follow-on actions, if necessary. The action also proposed to mandate new repetitive inspections for cracking of the fuselage skin adjacent to the drag splice fitting.

Comments

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

Add Service Information

One commenter asks that Boeing Alert Service Bulletin 747–53A2444, Revision 2, dated May 24, 2001 (referenced as the appropriate source of service information for accomplishment of certain actions in the proposed rule), be added to paragraph (a) of the proposed rule, which referenced Revision 1 of the bulletin, as another source of service information for accomplishment of the external detailed visual inspection. The FAA agrees that Revision 2 of the service bulletin can be added to paragraph (a) of the final rule, and we have revised the final rule accordingly.

Change Note 5 and Title

One commenter asks that Note 5 of the proposed rule, which gives credit for inspections and repairs accomplished before July 28, 2000, be changed to also give credit for previous accomplishment of the determination of a secondary inspection, as specified in paragraph (c) of the proposed rule. The commenter does not provide a reason for this request. The FAA agrees and we have changed Note 5 of the final rule, for clarification, to include previous accomplishment of the determination of a secondary inspection. We also have removed ''repairs'' from the note because the original release of the service bulletin does not provide instructions for repairs.

The same commenter asks that the title ''Repetitive Inspections,'' which precedes paragraph (d) of the final rule, be changed to ''Initial and Repetitive Inspections.'' We agree and have changed the title accordingly.

Previously Accomplished Inspections

One commenter asks for clarification of the compliance time for the repetitive inspections specified in paragraph (d) of the proposed rule for operators who previously accomplished the initial inspections in that paragraph per Figure 4 of the Work Instructions of Boeing Alert Service Bulletin 747–53A2444, dated May 25, 2000, or Revision 1, dated June 15, 2000. The commenter wants clarification that if it did the inspections per either of those service bulletins, it is only required to continue the repetitive inspections per Figures 4, 5, 6, or 7 of the Work Instructions of Boeing Alert Service Bulletin 747–53A2444, Revision 2, dated May 24, 2001, at 3,000 flight cycle intervals.

The FAA infers that the commenter is asking to do the repetitive inspections specified in paragraph (d) of the final rule within 3,000 flight cycles after doing the initial inspections per Boeing Alert Service Bulletin 747–53A2444, dated May 25, 2000, or Revision 1, dated June 15, 2000. We do not concur because the inspections specified in Revision 2 involve more comprehensive inspection procedures than those in the previous versions of the service bulletin. Operators that have done the initial inspections per previous versions of the service bulletin do not meet the requirements for the repetitive inspection intervals specified in paragraph (d) of the final rule until the initial inspections have been done per Revision 2. As specified in the preamble of the proposed rule, since the issuance of AD 2000–14–04, we received a report of severe cracking on a Model 747 series airplane, and Revision 2 of the service bulletin was issued to address that additional cracking. No change to the final rule is necessary in this regard.

Conclusion

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

Interim Action

This is interim action. The manufacturer has advised that it is developing a modification that will positively address the unsafe condition addressed by this AD. Once this modification is developed, approved, and available, the FAA may consider additional rulemaking.

Cost Impact

There are approximately 1,301 airplanes of the affected design in the worldwide fleet. The FAA estimates that 260 airplanes of U.S. registry will be affected by this AD.

The actions that are currently required by AD 2000–14–04 take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $31,200, or $120 per airplane.

The new inspections that are required by this AD action will take approximately 7 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the new requirements of this AD on U.S. operators is estimated to be $109,200, or $420 per airplane, per inspection cycle.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11813 (65 FR 43219, July 13, 2000), and by adding a new airworthiness directive (AD), amendment 39–12483, to read as follows:

2001–22–04 Boeing: Amendment 39–12483. Docket 2000–NM–220–AD. Supersedes AD 2000–14–04, Amendment 39–11813.

Applicability: All Model 747 series airplanes, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking of certain areas of the fuselage skin, which could result in reduced structural integrity of the fuselage, and consequent rapid depressurization of the airplane, accomplish the following:

Restatement of Requirements of AD 2000–14–04

One-Time Detailed Visual Inspection

(a) Prior to the accumulation of 13,000 total flight cycles or within 60 days after July 28, 2000 (the effective date of AD 2000–14–04, amendment 39–11813), whichever occurs later: Perform a one-time external detailed visual inspection of the fuselage skin adjacent to the drag splice fitting as illustrated in Figure 2 of Boeing Service Bulletin 747–53A2444, Revision 1, dated June 15, 2000, or Boeing Alert Service Bulletin 747–53A2444, Revision 2, dated May 24, 2001. If no cracking is detected, no further action is required by this paragraph.

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

Corrective Action

(b) If any cracking is detected during any inspection required by this AD, prior to further flight, repair in accordance with Boeing Alert Service Bulletin 747–53A2444, Revision 2, dated May 24, 2001. Where the service bulletin specifies to contact Boeing for repair instructions, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the approval letter must specifically reference this AD.

Note 3: Repairs accomplished prior to the effective date of this AD in accordance with a method approved by the Manager, Seattle ACO, FAA, or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company DER, are considered acceptable for compliance with the repair specified in paragraph (b) of this AD.

Note 4: Boeing Alert Service Bulletin 747–53A2444, Revision 2, dated May 24, 2001, references the 747 Structural Repair Manual (SRM) as an appropriate source of service information for accomplishment of the repair of the fuselage skin. However, the use of 7075-T6 aluminum as specified in certain revisions of the SRM is not an option for skin replacement when accomplishing the subject repair.

Secondary Inspection

(c) For airplanes on which cracking is detected during any inspection required by paragraph (a) or (d) of this AD, prior to further flight after accomplishment of paragraph (b) of this AD: Determine if a secondary inspection of adjacent structure is required, using the Logic Diagram illustrated in Figure 1 of Boeing Service Bulletin 747–53A2444, Revision 1, dated June 15, 2000, or Boeing Alert Service Bulletin 747–53A2444, Revision 2, dated May 24, 2001. If required, prior to further flight, accomplish the inspection in accordance with the service bulletin.

Note 5: Inspections (including secondary inspection determination) accomplished prior to July 28, 2000, in accordance with Boeing Alert Service Bulletin 747–53A2444, dated May 25, 2000, are considered acceptable for compliance with paragraphs (a) and (c) of this AD.

New Requirements of This AD

Initial and Repetitive Inspections

(d) Perform ultrasonic, high frequency eddy current, and detailed visual inspections in accordance with the Work Instructions of Boeing Alert Service Bulletin 747–53A2444, Revision 2, dated May 24, 2001, at the applicable times specified in Figure 1 of the Logic Diagram of the service bulletin; except where the compliance time in the logic diagram specifies an interval of ''after the release date of the service bulletin,'' this AD requires compliance within the interval specified in the service bulletin ''after the effective date of this AD.'' Repeat the applicable inspections at the intervals shown in Figure 1 of the Logic Diagram of the service bulletin. Accomplishment of the inspections required by this paragraph ends the inspections required by paragraph (a) of this AD.

Note 6: Where there are differences between the AD and the service bulletin, the AD prevails.

Alternative Methods of Compliance

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

(2) Alternative methods of compliance, approved previously in accordance with AD 2000–14–04, amendment 39–11813, are approved as alternative methods of compliance with this AD.

Note 7: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

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

Incorporation by Reference

(g) Except as provided by paragraph (b) of this AD, the actions shall be done in accordance with Boeing Service Bulletin 747–53A2444, Revision 1, dated June 15, 2000; or Boeing Alert Service Bulletin 747–53A2444, Revision 2, dated May 24, 2001; as applicable.

(1) The incorporation by reference of Boeing Alert Service Bulletin 747–53A2444, Revision 2, dated May 24, 2001, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Boeing Service Bulletin 747–53A2444, Revision 1, dated June 15, 2000, was approved previously by the Director of the Federal Register as of July 28, 2000 (65 FR 43219, July 13, 2000).

(3) Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(h) This amendment becomes effective on December 3, 2001.

Issued in Renton, Washington, on October 19, 2001.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–26952 Filed 10–26–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–10–AD; Amendment 39–12489; AD 2001–22–10]

RIN 2120–AA64

Airworthiness Directives; Dassault Model Mystere-Falcon 50, Mystere-Falcon 900, and Falcon 900EX Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Dassault Model Mystere-Falcon 50, Mystere-Falcon 900, and Falcon 900EX series airplanes, that requires revising the Emergency Procedures and Abnormal Procedures sections of the airplane flight manual to advise the flightcrew to immediately don oxygen masks in the event of significant pressurization or oxygen level changes. The actions specified by this AD are intended to prevent incapacitation of the flightcrew due to lack of oxygen, which could result in their inability to continue to control the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective December 3, 2001.

ADDRESSES: Information pertaining to this AD may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Dassault Model Mystere-Falcon 50, Mystere-Falcon 900, and Falcon 900EX series airplanes was published in the **Federal Register** on April 17, 2001 (66 FR 19727). That action proposed to require revising the Emergency Procedures and Abnormal Procedures sections of the airplane flight manual to advise the flightcrew to immediately don oxygen masks in the event of significant pressurization or oxygen level changes.

Comments

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

Request To Include Certain Changes to the Airplane Flight Manual (AFM)

The manufacturer reports the issuance of certain AFM changes, which correspond to the Figures associated with paragraphs (a) through (f) of this AD. The following AFM changes have been issued:

Figure in AD	Model/ Series	Type of change	Change No.
1	MF900	AFM routine revision	24
1	MF50	AFM routine revision	32
2	MF50	AFM routine revision	32
3	MF900	AFM routine revision	24
4	F900EX	AFM routine revision	6
5	F900C	AFM routine revision	2
6	F50EX	AFM routine revision	5

The FAA has accordingly revised the final rule to replace Note 1 of the proposed AD with new paragraph (g) of the final rule. Paragraph (g) specifies that the insertion of those AFM changes (also listed in Table 1 of this AD) into the AFM are acceptable for compliance with the corresponding requirements of this AD.

Conclusion

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

Cost Impact

The FAA estimates that 137 airplanes of U.S. registry will be affected by this AD. It will take approximately 1 work hour per airplane to accomplish the actions, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be $8,220, or $60 per airplane.

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

Regulatory Impact

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

have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2001–22–10 Dassault Aviation: Amendment 39–12489. Docket 2001–NM–10–AD.

Applicability: All Model Mystere-Falcon 50, Mystere-Falcon 900, and Falcon 900EX series airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent incapacitation of the flightcrew due to lack of oxygen, which could result in their inability to continue to control the airplane, accomplish the following:

Revision of Airplane Flight Manual (AFM) Emergency Procedures

(a) For Model Mystere-Falcon 50 series airplanes having serial numbers (S/Ns) 1 through 250 inclusive and 252, and Mystere-Falcon 900 series airplanes having S/Ns 1 through 178 inclusive: Within 10 days after the effective date of this AD, revise the Emergency Procedures section of the FAA-approved AFM to include the procedures listed in Figure 1 of this AD. This revision may be done by inserting a copy of Figure 1 into the AFM.

Figure 1

"In case of rapid cabin depressurization, apply the following procedure:

1. Crew oxygen masks ..... 100% - Donned
2. Microphone selector ..... MASK
3. FASTEN BELTS and no smoking light pushbuttons ..... On
4. Oxygen controller and passenger masks ..... OVERRIDE – Donned
5. Emergency descent ..... Initiated"

Revision of AFM Abnormal Procedures Section

(b) For Model Mystere-Falcon 50 series airplanes as identified in paragraph (a) of this AD: Within 10 days after the effective date of this AD, revise the Abnormal Procedures section of the AFM to include the procedures listed in Figure 2 of this AD. This revision may be done by inserting a copy of Figure 2 into the AFM.

Figure 2

"PRESSURIZATION – TOO HIGH CABIN ALTITUDE OR SLOW DEPRESSURIZATION

WARNING – CABIN light on and warning horn sounds.

– Cabin altitude higher than 10,000 ft.

– Crew oxygen masks ..... Donned – Normal

– Microphone selector ..... MASK and test

– Bleed air CREW, CABIN and PRV ..... ON or AUTO

– UP – DN control ..... Between 1 and 2 o'clock

– Cabin pressure selector switch ..... MAN (as required)

– UP – DN control .....DN (as required)

———— If necessary:

-  ..... On
- Passenger oxygen masks ..... Donned – Checked
- NOSE ..... Closed

———— If necessary:

- Execute an EMERGENCY DESCENT (see page 2.10.1) down to 14,000 ft or safe altitude."

BILLING CODE 4910–13–U

(c) For Model Mystere-Falcon 900 series airplanes as identified in paragraph (a) of this AD: Within 10 days after the effective date of this AD, revise the Abnormal Procedures section of the AFM by including the procedures listed in Figure 3 of this AD. This revision may be done by inserting a copy of Figure 3 into the AFM.

Figure 3

"PRESSURIZATION – TOO HIGH CABIN ALTITUDE OR SLOW DEPRESSURIZATION

WARNING – [CABIN] light on and aural warning.

– Cabin altitude higher than 10,000 ft.

– Crew oxygen masks ..... Donned/Normal

– Microphone selector ..... MASK

– Bleed air CREW and PASSENGER switches ..... Checked

– PRV 2 and PRV 3 switches ..... Checked

– BAG switch ..... ISOL

- [BAG ISOL] light ..... On

– *NOSE control lever* ..... *CLOSED*

– UP – DN control ..... Between 1 and 2 o'clock

– AUTO/MAN pressure selector switch ..... MAN

– UP – DN control .....DN (as required)

———— If cabin pressure cannot be restored:

- Isolation valve knob ..... ISOLATION
  - [ISOL] light checked .....On

———— If cabin pressure is restored:

- Cycle bleed air CREW and/or PASSENGER switches alternatively to OFF and ON. Retain condition for which cabin pressure is maintained.

- COND control lever *or crossfeed valve* ..... TIED

———— If cabin pressure is not restored:

- NORM/EMERG pressure selector switch .....EMERG

Figure 3 continued

———————— If cabin pressure is restored:

- Continue flight at highest possible altitude.
- CREW temperature controller .....As required

———————— If temperature gets too high during descent:

- Bleed air CREW switch..... OFF

———————— If cabin pressure cannot be restored:

-  .....On
- Passenger oxygen masks.....Donned

———————— If necessary:

- Execute an emergency descent down to the safe altitude or to 14,000 ft."

(d) For all Model Falcon 900EX series airplanes: Within 10 days after the effective date of this AD, revise the Abnormal Procedures section of the AFM by including the procedures listed in Figure 4 of this AD. This revision may be done by inserting a copy of Figure 4 into the AFM.

Figure 4

"PRESSURIZATION – TOO HIGH CABIN ALTITUDE

WARNING – [MASTER] with [CABIN] lights on and "CABIN" voice warning.

– Cabin altitude higher than 10,000 ft.

– Crew oxygen masks ..... Donned/Normal

– Microphone selector ..... MASK

– CREW and PASSENGER air conditioning valve switches ..... AUTO - Checked

– HP BLEED AIR switches ..... Auto - Checked

– BAG switch ..... ISOL

- [BAG ISOL] light ..... On - Checked

– UP – DN control knob ..... White range

– AUTO/MAN pressure selector switch ..... MAN

– UP – DN control knob .....DN (as required)

———— If cabin pressure cannot be restored:

- Isolation rotary switch.....ISOL
- [ISOL] light..... On - Checked

———— If cabin pressure is restored:

- Cycle PASSENGER and/or CREW air conditioning valve switches alternatively to OFF and ON. Retain condition for which cabin pressure is maintained.

———— If cabin pressure is not restored:

- NORM/EMERG pressure selector switch .....EMERG

Figure 4 continued

———————— If cabin pressure is restored:

- Continue flight at highest possible altitude.
- CREW temperature controller .....As required

———————— If temperature gets too high during descent:

- CREW air conditioning valve switch ..... OFF

———————— If cabin pressure cannot be restored:

-  light pushbutton .....On
- Passenger oxygen masks.....OVERRIDE/Donned

———————— If necessary:

- Execute an emergency descent down to the safe altitude or to 14,000 ft."

(e) For Model Mystere-Falcon 900 series airplanes having serial numbers 179 and subsequent: Within 10 days after the effective date of this AD, revise the Abnormal Procedures section of the AFM by including the procedures listed in Figure 5 of this AD. This revision may be done by inserting a copy of Figure 5 into the AFM.

Figure 5

"PRESSURIZATION – TOO HIGH CABIN ALTITUDE OR SLOW DEPRESSURIZATION

WARNING – [MASTER] with [CABIN] lights on and "CABIN" voice warning.

– Cabin altitude higher than 10,000 ft.

– Crew oxygen masks ..... Donned/Normal

– Microphone selector ..... MASK

– CREW and PASSENGER air conditioning switches . AUTO - Checked

– PRV 2 and PRV 3 BLEED AIR switches ..... On - Checked

– BAG switch ..... ISOL

- [BAG ISOL] light ..... On - Checked

– UP – DN control ..... Between 1 and 2 o'clock

– AUTO/MAN pressure selector switch ..... MAN

– UP – DN control ..... DN (as required)

——————— If cabin pressure cannot be restored:

- Isolation rotary switch ..... ISOLATION
  - [ISOL] light ..... On - Checked

——————— If cabin pressure is restored:

- Cycle PASSENGER and/or CREW air conditioning valve switches alternatively to OFF and ON. Retain condition for which cabin pressure is maintained.
- Crossfeed valve *or COND control lever* ..... TIED

——————— If cabin pressure is not restored:

- NORM/EMERG pressure selector switch ..... EMERG

Figure 5 continued

———— If cabin pressure is restored:

• Continue flight at highest possible altitude.

• CREW temperature controller ..... As required

———— If temperature gets too high during descent:

• CREW air conditioning valve switch ..... OFF

———— If cabin pressure cannot be restored:

•  .....On

• Passenger oxygen masks..... OVERRIDE - Donned

———— If necessary:

• Execute an emergency descent down to the safe altitude or to 14,000 ft."

(f) For Model Mystere-Falcon 50 series airplanes having serial numbers 251, 253, and subsequent: Within 10 days after the effective date of this AD, revise the Abnormal Procedures section of the AFM by including the procedures listed in Figure 6 of this AD. This revision may be done by inserting a copy of Figure 6 into the AFM.

Figure 6

"PRESSURIZATION – TOO HIGH CABIN ALTITUDE OR SLOW DEPRESSURIZATION

WARNING – MASTER light on + aural warning with CABIN light on.

– Cabin altitude higher than 10,000 ft.

– Crew oxygen masks ..... Donned – Normal

– Microphone selector ..... MASK and test

– HP 1, 2 and 3 BLEED AIR switches ..... AUTO – Checked

– BLEED AIR: CREW and CABIN switches ..... On

———— If depressurization persists:

- UP – DN control ..... Between 1 and 2 o'clock
- Cabin pressure selector switch ..... MAN (as required)
- UP – DN control ..... DN (as required)

———— If necessary:

-  ..... On
- Passenger oxygen masks ..... Donned – Checked
- NOSE ..... Closed

———— If necessary:

- Execute an EMERGENCY DESCENT (see page 2–120–1) down to 14,000 ft or safe altitude."

BILLING CODE 4910–13–U

(g) Insertion into the AFM of the applicable AFM revision in Table 1 of this AD, or insertion of a subsequent AFM revision that contains procedures identical to those in the applicable Figure of this AD, is acceptable for compliance with the corresponding requirements of this AD. Table 1 of this AD follows:

TABLE 1.—ALTERNATIVE SOURCES OF SERVICE INFORMATION

Figure in AD	Model/ Series	AFM revision
1	MF900	24
1	MF50	32
2	MF50	32
3	MF900	24
4	F900EX	6
5	F900C	2
6	F50EX	5

Alternative Methods of Compliance

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

Note 1: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Note 2: The subject of this AD is addressed in French airworthiness directives 2000–536–032(B), dated December 27, 2000; and 2000–536–032(B) R1, dated February 7, 2001.

Effective Date

(j) This amendment becomes effective on December 3, 2001.

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

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–27070 Filed 10–26–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2001–8683; Airspace Docket No. 01–ASW–2]

RIN 2120–AA66

Modification of Restricted Area R–6312 Cotulla, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action raises the upper limit of Restricted Area 6312 (R–6312) Cotulla, TX, from the current 12,000 feet above mean sea level (MSL) to Flight Level 230 (FL 230) to provide airspace for high altitude release bombing training. This rule makes no other changes to R–6312.

EFFECTIVE DATE: 0901 UTC, December 27, 2001.

FOR FURTHER INFORMATION CONTACT: Steve Rohring, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

On April 5, 2001, the FAA proposed (66 FR 18055) to amend 14 CFR part 73 to increase the vertical limits of R–6312 from 12,000 feet above MSL to FL 230. The FAA took this action in response to a request from the U.S. Navy indicating that current upper limit of R–6312 (12,000 feet above MSL) is not suitable for their training requirements. Specifically, altitudes up to FL230 are essential to fulfill their requirement to conduct high altitude release bombing training. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on this proposal to the FAA.

Discussion of Comment

In response to the Notice of Proposed Rule-making, the FAA received one comment in opposition to the change. The commenter indicated that the proposed increase to the ceiling from 12,000 feet MSL to FL 230 would cause visual flight rules (VFR) operations transiting the area to circumnavigate the restricted area. They requested an increase in the height of the east/west corridor through the restricted area from 1,000-feet AGL to 4,500 feet MSL to preclude the compression of transiting VFR aircraft into the corridor. The FAA disagrees with this comment because the predominant flow of VFR traffic in the area is north to south and visa versa. The affected aircraft would be higher than 12,000 feet and would not be likely to descend to 4,500 feet and circle to the east or west to pass through the east/west corridor rather than flying approximately 10nm to circumnavigate the restricted area. Further, increasing the height of the corridor would have a significant negative impact on military training without a significant benefit to civil VFR traffic in that it would prohibit low altitude awareness training.

Additionally, the commenter requests that the controlling agency's contact frequency be published in the tabular portion of the sectional aeronautical chart. The FAA agrees that it would be beneficial to display the contact frequency on the chart and will publish the contact frequency either in the tabular area or on the face of the sectional aeronautical chart.

The Rule

This amendment to 14 CFR part 73 raises the vertical limits of R–6312 from 12,000 feet above MSL to FL 230. This additional altitude is required in order to meet the Navy's requirement for high altitude release bombing training. No other change to R–6312 is made by this action. Section 73.63 of 14 CFR part 73 was republished in FAA Order 7400.8H, dated September 1, 2000.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current.

It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The United States Navy (USN) determined that this amendment of the restricted area's designated altitude qualifies for a categorical exclusion. The FAA has reviewed the USN's environmental documentation and concludes that this action is

categorically excluded in accordance with FAA Order 1050.1D, Procedures for Handling Environmental Impacts, and the FAA/DOD Memorandum of Understanding of 1998 regarding Special Use Airspace actions.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

Section 73.63 [Amended]

2. Section 73.63 is amended as follows:

* * * * *

R–6312 Cotulla, TX [Amended]

By removing the current designated altitudes and substituting the following:

Designated altitudes. Surface to FL 230, excluding the area west of a line between lat. 28°′141″ N., long. 98°47′56″ W.; and lat. 28°11′56″ N., long. 98°48′01″ W.; and the area along Highway 624 extending ¼ mile each side where the floor is 1,000 feet AGL.

* * * * *

Issued in Washington, DC, on October 19, 2001.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 01–27159 Filed 10–26–01; 8:45 am]

BILLING CODE 4910–13–P

POSTAL RATE COMMISSION

39 CFR Part 3001

[Order No. 1322; Docket No. RM2001–3]

Adoption of Sunset Rules

AGENCY: Postal Rate Commission.

ACTION: Notice and order adopting final rules with sunset provisions.

SUMMARY: Several sets of Commission rules of practice have expired. They addressed Express Mail rates and fees and certain limited classification changes. The Commission is adopting these rules again, on the same terms. The rules will be effective for 5 years. This action will allow established practices to continue, subject to sunset provisions.

DATES: These rules take effect November 28, 2001.

ADDRESSES: Send correspondence regarding this document to the attention of Steven W. Williams, acting secretary, 1333 H Street NW., suite 300, Washington, DC 20268–0001.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, general counsel, 202–789–6820.

SUPPLEMENTARY INFORMATION:

Regulatory History

Previous related rulemakings: Express Mail market response rules: 60 FR 12119; expedited minor classification cases, market test rules for classification changes; limited provisional service changes; and multi-year test period rules: 61 FR 24453—61 FR 24457.

Current rulemaking: 66 FR 39560 (7/13/01) and 66 FR 38602 (7/25/01).

Introduction

In order no. 1319, the Commission requested interested persons to comment on the advisability of reissuing five sets of rules of practice that had expired through operation of five-year sunset provisions. PRC Order No. 1319 (July 18, 2001). These rules, which provide for expedited consideration of certain Postal Service requests for a recommended decision, are of two types. The first concerns changes in Express Mail rates and fees; [1] the second encompasses four sets of rules addressing certain limited classification changes.[2]

Four sets of comments were filed. The comments reflect no unanimity, ranging from the Postal Service's suggestion that, at a minimum, each rule be reissued, to United Parcel Service's (UPS's) position that none of the rules be reissued. The comments, which are briefly summarized below, are available for public inspection at the Commission's offices and via the Commission's Web site, *www.prc.gov.*

Upon consideration of the comments and an assessment of the rules, the Commission has determined to reissue the rules for an additional five-year period. The Commission, however, declines to broaden the scope of this proceeding beyond the affected rules.

[1] See 39 CFR 3001.57–57c (1999). The Express Mail Service rules were adopted in 1989 and reissued in 1995. See PRC Order No. 836 (August 10, 1989) and PRC Order No. 1042 (February 17, 1995). These rules expired March 6, 2000. 60 FR 12116.

[2] See 39 CFR 3001.161–166 (concerning market tests), 39 CFR 3001.171–176 (concerning provisional service changes), 39 CFR 3001.69–69c, (concerning minor classification changes), and 39 CFR 3001.181–182 (concerning multi-year test periods for new services). These rules became effective in May 1996 and expired May 15, 2001. See PRC Order No. 1110 (May 7, 1996); see also 61 FR 24447.

I. Comments

A. Postal Service

The Postal Service urges the Commission to reissue and to consider broadening the scope of the rules. The Postal Service asserts that, at a minimum, the limited classification rules should be reissued, suggesting further that the Commission should consider expanding the concept of multi-year test periods, rule 181, to include alternative test periods in rate and classification proceedings before the Commission. Postal Service Comments at 1–2, 12.

Second, the Postal Service advocates that the Express Mail rules be reissued, while suggesting the possibility that those procedures be expanded to other services. Id. at 2–3. Recognizing that this suggestion may be beyond the reach of this proceeding, the Postal Service concludes that the concept ''is worthy of consideration at some point in the future.'' Id. at 3.

Third, the Postal Service raises issues not covered by the expired rules, i.e., rate bands and negotiated service agreements, concluding that ''these and other measures of ratemaking flexibility would be worthwhile topics of a future rulemaking.'' Ibid.

In support of reissuing the rules, the Postal Service focuses on the flexibility they afford, particularly the limited classification rules. The infrequency with which these rules have been invoked is not, according to the Postal Service, an indication that they lack value. Rather, a combination of events has lessened the Postal Service's ability to invoke the rules, e.g., its caseload before the Commission. Id. at 4–5. Underscoring the point, it notes that the Commission's rules governing experimental classification proposals, 39 U.S.C. 3001.67–67d, were employed only once in the first fifteen years of their existence. Id. at 4. Beginning in 1996, however, they have been invoked numerous times.

Turning to the rules, the Postal Service discusses the instances in which the limited classification rules have been invoked. It concludes that these rules, involving market tests, provisional services, and minor classification changes, while from its perspective somewhat imperfect, worked sufficiently well to warrant their renewal. Id. at 7–11. Concerning multi-year test periods, a rule that it has yet to invoke, the Postal Service notes the importance of having an opportunity to recover start-up costs over an appropriate period. In addition, it broaches the issue of expanding the Commission's rules to permit alternate

test periods ''in all Commission proceedings conducted pursuant to 39 U.S.C. 3622 and 3623.'' Id. at 12. Noting that this issue has been previously considered, the Postal Service states that such an expansion would promote rate proposals based on phased rate schedules ''over a predetermined rate cycle.'' Id. at 13.

Finally, citing their potential utility, the Postal Service urges the Commission to renew the Express Mail rules. It would prefer, however, if the rules were expanded ''to other services facing market pressures similar to Express Mail.'' Id. at 15. As noted above, the Postal Service recognizes that this suggestion may exceed the scope of this rulemaking. Id. at 2–3.

B. Newspaper Association of America (NNA)

The NNA submitted brief comments advocating that each of the expired rules be reissued.

C. Office of Consumer Advocate (OCA)

The OCA frames the issue whether to reissue the rules by posing several questions, e.g., whether the rules were invoked, whether they are likely to be used, and whether the rules need to be revised. OCA Comments at 2. Having considered these questions, the OCA recommends against reissuing the Express Mail rules, but favors renewing those involving limited classification changes.

Citing the history of the rules, i.e., their never being invoked and the Postal Service's failure to seek their renewal, the OCA claims that the Express Mail rules are unnecessary. In addition, the OCA asserts that the Commission can, on an ad hoc basis, accommodate requests for expedition should it be warranted. Id. at 3.

In general, the OCA finds renewal of the limited classification rules is justified because the rules have proved useful, workable, and practical. Id. at 3–6. The OCA supports reissuing rule 181, multi-year test periods, because among other things, the rule signals the Commission's willingness to consider new services requiring a longer test period. Id. at 7.[3]

D. UPS

UPS opposes reissuing the rules, contending that they are neither necessary nor useful. UPS Comments at 1–2. UPS advances three arguments against reissuing the Express Mail rules. First, it notes that they have never been employed by the Postal Service. Id. at 2. Second, it asserts that the market for expedited letters is mature, implying that there is no need for the Express Mail rules. Ibid. Third, UPS argues that the Commission's regular rules are adequate to address requests for expedition. Id. at 3; see also 6–9.

Citing their infrequent use, UPS also opposes reissuing the rules concerning limited classification changes. Id. at 3–4. Further, UPS asserts that the rules for minor classification cases, provisional changes, and market tests are ambiguous and thus ''invite litigation over whether the proper set of rules is being applied.'' Id. at 5.

UPS argues that the Commission's regular rules are sufficiently flexible to address the Postal Service's rate and classification requests. In support, it cites, inter alia, rule 1 (the rules are to be liberally construed to achieve a just and speedy result), rule 23(a)(1) (concerning the presiding officer's hearing authority), and rule 22 (concerning waivers). Id. at 6–7. In addition, UPS suggests that the rules governing experimental changes provide sufficient flexibility ''to accommodate situations that the regular rules do not cover.'' Id. at 8.

Finally, UPS contends that reissuing the rules poses certain risks. These include: predetermined procedural tracks that may not be appropriate, more rules add complexity and confusion and, assuming the rules are unnecessary, raising the ''potential for implicating due process concerns.'' Id. at 10.

II. Discussion

The Commission's decision to reissue the rules is influenced by several factors. First, the rules were previously enacted. Thus not only are they well known to participants, there has been ample opportunity to consider and to comment on the rules. Second, the rules are narrowly drawn and have not engendered significant controversy. Third, they afford the Postal Service procedural flexibility while, concomitantly, protecting intervenors' rights to participate meaningfully in any such proceeding. Fourth, the rules have proven to be workable, or provide an option that, on balance, continues to have merit. Finally, renewing the rules, including the sunset provisions, will enable the Postal Service and parties to gain further experience while also tolling their existence should they become unnecessary or obsolete.

The limited classification rules have proven to be workable and useful. See OCA Comments at 3 *et seq.*, Postal Service Comments at 7 *et seq.* For example, the market test rules, 39 CFR 3001.161–166, were successfully invoked in docket no. MC98–1, Mailing Online. The rules permitting minor classification changes, 39 CFR 3001.69–69c, were successfully employed in docket no. MC99–4, Bulk Parcel Return Service. The settlement which resulted in that proceeding was facilitated, at least in part, by the operation of the rules. The Postal Service invoked the rules concerning provisional services, 39 CFR 3001.171–176, in docket no. MC97–5. While the packaging service proposal in that proceeding was never implemented, the rules operated effectively, allowing the Postal Service to introduce a new product. Similarly, the multi-year test period rules, 39 CFR 3001.181–182, while not yet invoked, provide a useful tool for assessing new services. Taken as a whole, the rules provide a simplified means for the Postal Service to present and the Commission to consider innovations and refinements in its service offerings.

UPS's claim that the rules are ambiguous is not sufficient reason not to reissue them. First, the claim has not been borne out in practice. The rules have worked reasonably well. Second, UPS's suggestion that the regular rules are an adequate ad hoc surrogate for the instant rules is not persuasive. The argument implicitly assumes that were the Postal Service to request a waiver of the regular rules it would engender no controversy in its own right. In practice, such a result would appear to be unlikely. On occasion, controversy may be an unavoidable byproduct of any rules, but this does not establish a legitimate basis to discard the instant rules.[4]

The Express Mail market rules, 39 CFR 3001.57–57c (1999), present a closer question.[5] Two commenters favor and two commenters oppose their renewal. Those opposing note that the rule has never been invoked. UPS Comments at 2; OCA Comments at 2.

[3] The OCA also notes the need to conform the instant rules to rules currently under consideration in docket no. RM2001–2, Filing Online. This is a matter to be addressed in a subsequent order since that docket remains pending.

[4] UPS's due process concerns are neither well founded nor well developed. They proceed from the flawed assumption that the rules are unneeded, and even with that assumption, give rise only to ''the potential for implicating due process concerns.'' UPS Comments at 10. The Commission has previously addressed potential due process problems associated with the instant rules. Among other things the Commission assured ''all parties that it will not allow [the limited classification] rules to be used to alter the normally applicable standards of proof, curtail legitimate discovery and hearing practice, or otherwise deprive interested parties of their procedural rights.'' PRC order no. 1110 (May 7, 1995) at 7.

[5] The Express Mail rules in the attachment reflect renumbering. Former rule 57a is now rule 58; former rule 57b is now rule 59; and former rule 57c is now rule 60.

They assert this demonstrates that the rule is unnecessary. Lack of use, however, is not necessarily dispositive. As the Postal Service notes, the rules governing experimental classification changes were used but once in their first 15 years of existence, but have been employed seven times in the last six years.[6] Furthermore, the Postal Service cites various factors that weighed on its use of these rules. Postal Service Comments at 14. In addition, the Postal Service touts the potential value of the rules.

The Commission concludes that reissuing the Express Mail Service rules is appropriate. Lack of use is not, in this instance, compelling enough to foreclose the flexibility afforded by this option. The rules provide adequate safeguards to protect the interests of all interested persons. Furthermore, inclusion of the sunset provision will ensure that these rules will be reviewed again within five years or expire on their own accord.

The Commission declines to act on the Postal Service's suggestion that its rules be expanded. See, *e.g.,* Postal Service Comments at 2–3. This proceeding was commenced solely to consider the status of the expired rules. Expanding it to include new issues would raise concerns about timing and notice. This is not to suggest that the topics do not merit further attention, but simply that this is not the appropriate vehicle.

In conclusion, pursuant to the foregoing discussion, the Commission hereby amends its rules of practice as set forth in the attachment to this order.

III. Ordering Paragraphs

It is ordered:

1. The Commission's rules of practice are amended as set forth in the attachment.

2. The attached rules are effective November 28, 2001.

3. The acting secretary shall cause this order to be published in the **Federal Register**.

Dated: September 24, 2001.

Steven W. Williams,

Acting Secretary.

List of Subjects in 39 CFR Part 3001

Administrative practice and procedure, Postal Service.

[6] Docket no. MC2001–1 (regarding presorted priority mail), docket No. MC2000–2 (regarding Mailing Online), docket no. MC2000–1 (regarding ride-along changes for publications), docket no. MC99–1 (regarding non-letter-size business reply mail), docket no. MC98–1 (regarding Mailing Online), docket no. MC97–1 (regarding non-letter size business reply mail), and docket no. MC96–1 (regarding small parcel automation rate).

For the reasons stated in the preamble, the Postal Rate Commission amends 39 CFR part 3001 as follows:

PART 3001—[AMENDED]

1. The authority citation for part 3001 continues to read as follows:

Authority: 39 U.S.C. 404(b); 3603; 3622–24; 3661; 3662; 3663.

2. Amend subpart B, Rules Applicable to Requests for Changes in Rates or Fees, by adding §§ 3001.57–3001.60 to read as follows:

§ 3001.57 Market response rate requests for express mail service—purpose and duration of rules.

(a) This section and §§ 3001.58 through 3001.60 only apply in cases in which the Postal Service requests an expedited recommended decision pursuant to section 3622 of the Postal Reorganization Act on changes in rates and fees for Express Mail service, where the proposed changes are intended to respond to a change in the market for expedited delivery services for the purpose of minimizing the loss of Express Mail contribution to institutional costs recommended in the most recent omnibus rate case. These rules set forth the requirements for filing data in support of such rate proposals and for providing notice of such requests, and establish an expedited procedural schedule for evaluating Market Response Rate Requests. These rules may not be used when the Postal Service is requesting changes in Express Mail rates as part of an omnibus rate case.

(b) This section and §§ 3001.58 through 3001.60 are effective November 28, 2001 through November 28, 2006.

§ 3001.58 Market response rate requests—data filing requirements.

(a) Each formal request made under the provisions of §§ 3001.57 through 3001.60 shall be accompanied by such information and data as are necessary to inform the Commission and the parties of the nature and expected impact of the change in rates proposed. Except for good cause shown, the information specified in paragraphs (c) through (i) shall also be provided with each request.

(b) Except as otherwise expressly provided in this section, the information required by § 3001.54 (b) through (r) must be filed only for those subclasses and services for which the Postal Service requests a change in rates or fees. Test period volume, cost, and revenue estimates presented in satisfaction of rule 58 shall be for four postal quarters beginning after the filing date of the request. The cost roll-forward may be developed by extending the cost forecasting model used in the last omnibus rate case (utilizing available actual data). Volume and revenue estimates required by these rules shall utilize, to the extend practicable, the factors identified in rule 54(j)(6), and must be fully explained, with all available supporting documentation supplied, but they need not be econometrically derived.

(c) Every formal request made under the provisions of §§ 3001.57 through 3001.60 shall contain an explanation of why the change proposed by the Postal Service is a reasonable response to the change in the market for expedited delivery services to which it is intended to respond.

(d) Every formal request made under the provisions of §§ 3001.57 through 3001.60 shall be accompanied by the then effective Domestic Mail Classification Schedule sections which would have to be altered in order to implement the changes proposed by the Postal Service, and, arranged in a legislative format, the text of the replacement Domestic Mail Classification Schedule sections the Postal Service proposes.

(e) In addition to the required test period cost estimates, every formal request made under the provisions of §§ 3001.57 through 3001.60 shall be accompanied by a statement of the attributable costs by segment and component for Express Mail service determined in accordance with the attributable cost methodology adopted by the Commission in the most recent omnibus rate case, for the base year used in that case, and for each fiscal year thereafter for which cost data is available. If the Postal Service believes that an adjustment to that methodology is warranted it may also provide costs using alternative methodologies as long as a full rationale for the proposed changes is provided.

(f) Each formal request made under the provisions of §§ 3001.57 through 3001.60 shall include a description of all operational changes, occurring since the most recent omnibus rate case, having an important impact on the attributable cost of Express Mail. Postal Service shall include an analysis and estimate of the cost impact of each such operational change.

(g) Every formal request made under the provisions of §§ 3001.57 through 3001.60 shall be accompanied by a statement of the actual Express Mail revenues of the Postal Service from the then effective Express Mail rates and fees for the most recent four quarters for which information is available.

(h) Each formal request made under the provisions of §§ 3001.57 through 3001.60 shall be accompanied by a complete description of the change in the market for expedited delivery services to which the Postal Service proposal is in response, a statement of when that change took place, the Postal Service's analysis of the anticipated impact of that change on the market, and a description of characteristics and needs of customers and market segments affected by this change which the proposed Express Mail rates are designed to satisfy.

(i) Each formal request made under the provisions of §§ 3001.57 through 3001.60 shall include estimates, on a quarterly basis, of test period volumes, revenues, and attributable costs determined in accordance with the attributable cost methodology adopted by the Commission in the most recent omnibus rate case for each Express Mail service for which rate changes are proposed assuming:

(1) rates remain at their existing levels, and

(2) rates are changed after 90 days to the levels suggested in the request.

(j)(1) Each formal request made under the provisions of §§ 3001.57 through 3001.60 shall be accompanied by the following information, for each quarter following the base year in the most recent omnibus rate case:

(i) Estimated volume by rate cell, for each Express Mail service;

(ii) Total postage pounds of Express Mail rated at:

(A) up to ½ pound,

(B) ½ pound up to 2 pounds,

(C) 2 pounds up to 5 pounds; and

(iii) Total pounds of Express Mail and of each other subclass of mail carried on hub contracts.

(2) In each instance when rates change based on a proceeding under the provisions of §§ 3001.57 through 3001.60 the Postal Service shall provide, one year after the conclusion of the test period, the data described in section 3001.58(j)(1)(i–iii), for each of the four quarters of the test period.

(k) Each formal request made under the provisions of §§ 3001.57 through 3001.60 shall include analyses to demonstrate:

(1) that the proposed rates are consistent with the factors listed in 39 U.S.C. 3622(b),

(2) that the proposed rate changes are in the public interest and in accordance with the policies and applicable criteria of the Act, and

(3) that the proposed rates will preserve, or minimize erosion of, the Express Mail contribution to institutional costs recommended in the most recent omnibus rate case.

(l) Each formal request made under the provisions of §§ 3001.57 through § 3001.60 shall be accompanied by a certificate that service of the filing in accordance with § 300l.59(c) has been made.

§ 3001.59 Market Response Rate Requests–expedition of public notice and procedural schedule.

(a) The purpose of this section is to provide a schedule for expediting proceedings when a trial-type hearing is required in a proceeding in which the Postal Service proposes to adjust rates for Express Mail service in order to respond to a change in the market for expedited delivery services.

(b) The Postal Service shall not propose for consideration under the provisions of §§ 3001.57 through 3001.60 rates lower than:

(1) The average per piece attributable cost for Express Mail service determined in the most recent omnibus rate case, or

(2) The average per piece attributable cost for Express Mail service as determined by the Postal Service in accordance with section 3001.58(e) for the most recent fiscal year for which information is available, whichever is higher. Neither shall the Postal Service propose a rate for any rate cell which is lower than the estimated test period attributable cost of providing that rate cell with service.

(c)(1) Persons who are interested in participating in Express Mail Market Response Rate Request cases may register at any time with the Secretary of the Postal Rate Commission, who shall maintain a publicly available list of the names and business addresses of all such Express Mail Market Response registrants. Persons whose names appear on this list will automatically become parties to each Express Mail Market Response rate proceeding. Other interested persons may intervene pursuant to section 3001.20 within 28 days of the filing of a formal request made under the provisions of §§ 3001.57 through 3001.60. Parties may withdraw from the register or a case by filing a notice with the Commission.

(2) When the Postal Service files a request under the provisions of §§ 3001.57 through 3001.60 it shall on that same day effect service by hand delivery of the complete filing to each Express Mail Market Response registrant who maintains an address for service within the Washington metropolitan area and serve the complete filing by Express Mail service on all other registrants. Each registrant is responsible for insuring that his or her address remains current.

(3) When the Postal Service files a request under the provisions of §§ 3001.57 through 3001.60, it shall on that same day send by Express Mail service to all participants in the most recent omnibus rate case a notice which briefly describes its proposal. Such notice shall indicate on its first page that it is a notice of an Express Mail Market Response Rate Request to be considered under §§ 3001.57 through 3001.60, and identify the last day for filing a notice of intervention with the Commission.

(d) In the absence of a compelling showing of good cause, the Postal Service and parties shall calculate Express Mail costs in accordance with the methodologies used by the Commission in the most recent omnibus rate case. In the analysis of customers' reactions to the change in the market for expedited delivery services which prompts the request, the Postal Service and parties may estimate the demand for segments of the expedited delivery market and for types of customers which were not separately considered when estimating volumes in the most recent omnibus rate case.

(e)(1) In the event that a party wishes to dispute as an issue of fact whether the Postal Service properly has calculated Express Mail costs or volumes (either before or after its proposed changes), or wishes to dispute whether the change in the market for expedited delivery services cited by the Postal Service has actually occurred, or wishes to dispute whether the rates proposed by the Postal Service are a reasonable response to the change in the market for expedited delivery services or are consistent with the policies of the Postal Reorganization Act, that party shall file with the Commission a request for a hearing within 28 days of the date that the Postal Service files its request. The request for hearing shall state with specificity the fact or facts set forth in the Postal Service's filing that the party disputes, and when possible, what the party believes to be the true fact or facts and the evidence it intends to provide in support of its position.

(2) The Commission will not hold hearings on a request made pursuant to §§ 3001.57 through 3001.60 unless it determines that there is a genuine issue of material fact to be resolved, and that a hearing is needed to resolve this issue.

(3) Whether or not a hearing is held, the Commission may request briefs and/or argument on an expedited schedule, but in any circumstance it will issue its recommended decision as promptly as

is consistent with its statutory responsibilities.

(4) In order to assist in the rapid development of an adequate evidentiary record, all participants may file appropriate discovery requests on other participants as soon as an Express Mail Market Response Rate Request is filed. Answers to such discovery requests will be due within 10 days. Objections to such discovery requests must be made within 10 days in the form of a motion to excuse from answering, with service on the questioning participant made by hand, facsimile, or expedited delivery. Responses to motions to excuse from answering must be submitted within seven days, and should such a motion be denied, the answers to the discovery in question are due within seven days of the denial thereof. It is the Commission's intention that parties resolve discovery disputes informally between themselves whenever possible. The Commission, therefore, encourages the party receiving discovery requests considered to be unclear or objectionable to contact counsel for the party filing the discovery requests whenever further explanation is needed, or a potential discovery dispute might be resolved by means of such communication.

(5) If, either on its own motion, or after having received a request for a hearing, the Commission concludes that there exist one or more genuine issues of material fact and that a hearing is needed, the Commission shall expedite the conduct of such record evidentiary hearings to meet both the need to respond promptly to changed circumstances in the market and the standards of 5 U.S.C. 556 and 557. The procedural schedule, subject to change as described in paragraph (e)(6) of this section, is as follows: Hearings on the Postal Service case will begin 35 days after the filing of an Express Mail Market Response rate request; parties may file evidence either in support of or in opposition to the Postal Service proposal 49 days after the filing; hearings on the parties' evidence will begin 56 days after the filing; briefs will be due 70 days after the filing; and reply briefs will be due 77 days after the filing.

(6) The presiding officer may adjust any of the schedule dates prescribed in (e)(5) of this section in the interests of fairness, or to assist in the development of an adequate evidentiary record. Requests for the opportunity to present evidence to rebut a submission by a participant other than the Postal Service should be filed within three working days of the receipt of that material into the evidentiary record, and should include a description of the evidence to be offered and the amount of time needed to prepare and present it. Requests for additional time will be reviewed with consideration as to whether the requesting participant has exercised due diligence, and whether the requesting participant has been unreasonably delayed from fully understanding the proposal.

§ 3001.60 Express mail market response—rule for decision.

The Commission will issue a recommended decision in accordance with the policies of 39 U.S.C., and which it determines would be a reasonable response to the change in the market for expedited delivery services. The purpose of §§ 3001.57 through 3001.60 is to allow for consideration of Express Mail Market Response rate requests within 90 days, consistent with the procedural due process rights of interested persons.

3. Amend Subpart C, Rules Applicable to Requests for Establishing or Changing the Mail Classification Schedule, by adding §§ 3001.69–69c to read as follows:

§ 3001.69 Expedited minor classification cases—applicability.

(a) This section and §§ 3001.69a through 3001.69c apply in cases where the Postal Service requests a recommended decision pursuant to section 3623 and seeks expedited review on the ground that the requested change in mail classification is minor in character. The requirements and procedures specified in these sections apply exclusively to the Commission's consideration of requested mail classification changes which the Postal Service denominates as, and the Commission finds to be, minor in character. A requested classification change may be considered to be minor in character if it:

(1) Would not involve a change in any existing rate or fee;

(2) Would not impose any restriction in addition to pre-existing conditions of eligibility for the entry of mail in an existing subclass or category of service, or for an existing rate element or work sharing discount; and

(3) Would not significantly increase or decrease the estimated institutional cost contribution of the affected subclass or category of service.

(b) This section and §§ 3001.69a through 3001.69c are effective November 28, 2001 through November 28, 2006.

§ 3001.69a Expedited minor classification cases—filing of formal request and prepared direct evidence.

(a) Whenever the Postal Service determines to request that the Commission submit a decision recommending a mail classification change, and to seek expedited review on the ground that the requested change is minor in character, it shall file a request for a change in mail classification pursuant to section 3623 that comports with the requirements of this section and of subpart C of this part. Each such formal request shall include the following particular information:

(1) A description of the proposed classification change or changes, including proposed changes in the text of the Domestic Mail Classification Schedule and any pertinent rate schedules;

(2) A thorough explanation of the grounds on which the Postal Service submits that the requested change in mail classification is minor in character; and

(3) An estimate, prepared in the greatest level of detail practicable, of the overall impact of the requested change in mail classification on postal costs and revenues, mail users, and competitors of the Postal Service.

(b) If the Postal Service believes that data required to be filed under § 3001.64 are unavailable, it shall explain their unavailability, as required by § 3001.64(a)(2)(i), (ii), and (iv). If the Postal Service believes that any of the data or other information required to be filed under § 3001.64 should not be required in light of the minor character of the requested change in mail classification, it shall move for a waiver of that requirement, stating with particularity the reasons why the character of the request and its circumstances justify a waiver of the requirement. A satisfactory explanation of the unavailability of information required under § 3001.64, or of why it should not be required to support a particular request, will be grounds for excluding from the proceeding a contention that the absence of the information should form a basis for rejection of the request, unless the party desiring to make such contention

(1) Demonstrates that, having regard to all the facts and circumstances of the case, it was clearly unreasonable for the Postal Service to propose the change in question without having first secured the information and submitted it in accordance with § 3001.64; or

(2) Demonstrates other compelling and exceptional circumstances requiring that the absence of the information in

question be treated as bearing on the merits of the proposal.

§ 3001.69b Expedited minor classification cases—expedition of procedural schedule.

(a) The purpose of this section is to provide a schedule for expediting proceedings in which the Postal Service requests that the Commission recommend a change in mail classification and expedite consideration of that request on the ground that the change is minor in character.

(b) Persons who are interested in participating in proceedings to consider Postal Service requests for minor changes in mail classification may register at any time with the Secretary of the Postal Rate Commission, who shall maintain a publicly available list of the names and business addresses of all such registrants. Persons whose names appear on this list will automatically become parties to each proceeding in which the Postal Service requests a minor mail classification change pursuant to §§ 3001.69 through 3001.69c. Parties may withdraw from the register or a particular case by filing a notice with the Secretary of the Commission.

(c) When the Postal Service files a request under the provisions of §§ 3001.69 through 3001.69c, it shall on that same day effect service by hand delivery of the complete filing to each person registered pursuant to subsection (b) who maintains an address for service within the Washington metropolitan area and serve the complete filing by Priority Mail service on all other registrants. Each registrant is responsible for insuring that his or her address remains current.

(d) When the Postal Service files a request under the provisions of §§ 3001.69 through 3001.69c, it shall on that same day send by First-Class Mail to all participants in the most recent omnibus rate case a notice which briefly describes its proposal. This notice shall indicate on its first page that it is a notice of a request for a minor change in mail classification to be considered under §§ 3001.69 through 3001.69c, and identify the last day for filing a notice of intervention with the Commission.

(e) Within 5 days after receipt of a Postal Service request invoking the operation of §§ 3001.69 through 3001.69c, the Commission shall issue a notice of proceeding and provide for intervention by interested parties pursuant to § 3001.20. The notice of proceeding shall state that the Postal Service has denominated the mail classification change it requests a minor change, and has requested expedited consideration pursuant to §§ 3001.69 through 3001.69c. The notice shall further state the grounds on which the Postal Service submits that the requested change in mail classification is minor in character, and shall afford all interested parties 26 days after filing of the Postal Service's request within which to intervene, submit responses to the Postal Service's request for consideration of its proposed mail classification change under the terms of §§ 3001.69 through 3001.69c, and request a hearing.

(f) Within 28 days after publication of the notice of proceeding pursuant to subsection (e), the Commission shall decide whether to consider the request of the Postal Service as a minor classification change request under §§ 3001.69 through 3001.69c, and shall issue an order in the proceeding incorporating that ruling. The Commission shall order a request to be considered under §§ 3001.69 through 3001.69c if it finds that:

(1) The requested classification change is minor in character, and

(2) The effects of the requested change are likely to be appropriately limited in scope and overall impact.

(g) If the Commission determines that the request of the Postal Service is not appropriate for consideration as a minor classification change request, no further procedures under §§ 3001.69 through 3001.69c shall be ordered, and the request will be considered in accordance with other appropriate provisions of Subpart C of this part.

(h) If the Commission determines that the Postal Service request is appropriate for consideration under §§ 3001.69 through 3001.69c, those respondents who request a hearing shall be directed to state with specificity within 14 days after publication of the notice the issues of material fact that require a hearing for resolution. Respondents shall also identify the fact or facts set forth in the Postal Service's filing that the party disputes, and when possible, what the party believes to be the true fact or facts and the evidence it intends to provide in support of its position.

(i) The Commission will hold hearings on a Postal Service request which is considered under §§ 3001.69 through 3001.69c when it determines that there are genuine issues of material fact to be resolved, and that a hearing is needed to resolve those issues. Hearings on the Postal Service request will commence within 21 days after issuance of the Commission order pursuant to subsection (f). Testimony responsive to the Postal Service request will be due 14 days after the conclusion of hearings on the Postal Service request.

§ 3001.69c Expedited minor classification cases—time limits.

The Commission will treat cases to which §§ 3001.69 through 3001.69c apply as subject to the maximum expedition consistent with procedural fairness. The schedule for adoption of a recommended decision will therefore be established, in each such case, to allow for issuance of such decision not more than 90 days after the filing of the request of the Postal Service if no hearing is held, and not more than 120 days after the filing of the request if a hearing is scheduled.

4. Amend part 3001 by adding subpart I, Rules for Expedited Review to Allow Market Tests of Proposed Mail Classification Changes, §§ 3001.161 -3001.166 to read as follows:

Subpart I—Rules for Expedited Review to Allow Market Tests of Proposed Mail Classification Changes

§ 3001.161 Applicability.

(a) This section and §§ 3001.162 through 3001.166 apply in cases in which the Postal Service requests a recommended decision pursuant to section 3623 preceded by testing in the market in order to develop information necessary to support a permanent change. The requirements and procedures specified in these sections apply exclusively to the Commission's determination to recommend in favor of or against a market test proposed by the Postal Service, and do not supersede any other rules applicable to the Postal Service's request for recommendation of a permanent change in mail classification. In administering this subpart, it shall be the policy of the Commission to recommend market tests that are reasonably calculated to produce information needed to support a permanent change in mail classification, and that are reasonably limited in scope, scale, duration, and potential adverse impact. Except in extraordinary circumstances and for good cause shown, the Commission shall not recommend market tests of more than one year in duration; however, this limitation is not intended to bar the Postal Service from conducting more than one market test in support of a potential permanent change in mail classification in appropriate circumstances.

(b) This section and §§ 3001.162 through 3001.166 are effective November 28, 2001 through November 28, 2006.

§ 3001.162 Filing of market test proposal and supporting direct evidence.

Whenever the Postal Service determines to request that the Commission submit a recommended decision on a change in mail classification preceded by testing in the market, the Postal Service shall file with the Commission, in addition to its request for a permanent change in mail classification pursuant to section 3623, a request for a recommended decision in favor of its proposed market test of the requested change in mail classification. Each formal request filed under this subpart shall include such information and data and such statements of reasons and bases as are necessary and appropriate fully to inform the Commission and the parties of the nature, scope, significance and impact of the proposed market test, and to show that it is in the public interest and in accordance with the policies of the Act and the applicable criteria of the Act. Each formal request shall also include the following particular information:

(a) A description of the services to be provided in the market test, and the relationship between the services to be provided and the permanent change or changes in the mail classification schedule requested by the Postal Service;

(b) A statement of each rate or fee to be charged for each service to be provided during the market test, together with all information relied upon to establish consistency of those rates and fees with the factors specified in section 3622(b);

(c) A description of the number and extent of the service areas in which the market test will be conducted, including the number and type of postal facilities which will be used;

(d) A statement of the planned duration of the market test;

(e) Proposed Domestic Mail Classification Schedule provisions which incorporate the information required in paragraphs (a) through (d) of this section;

(f) A statement of the goals and objectives of the proposed market test, supported by quantitative projections of anticipated results to the extent practicable.

(g) A statement of those features of the proposed market test that, in the opinion of the Postal Service, cannot be modified without significantly impairing the value of the test;

(h) An estimate of the number of customers who will participate in the market test to the extent that such an estimate is practicable, together with a description of the means by which the Postal Service plans to provide equal access to all potential users in the test market service areas; and

(i) A plan for testing the proposed change or changes in the market, including a plan for gathering the data needed to support a permanent change in mail classification and for reporting the test data to the Commission. If periodic reporting of the test data would be harmful to the purposes of the test, such as by revealing information that might encourage competitors or mailers to take actions that would affect the test results, the plan may provide for presentation of the test data as part of the subsequent filing of data supporting a permanent mail classification change.

§ 3001.163 Procedures—expedition of public notice and procedural schedule.

(a) The purpose of this section is to provide a schedule for expediting proceedings in which the Postal Service proposes to conduct a market test of a requested change in mail classification it has submitted to the Commission pursuant to section 3623.

(b) Persons who are interested in participating in proceedings to consider Postal Service requests to conduct a market test may register at any time with the Secretary of the Postal Rate Commission, who shall maintain a publicly available list of the names and business addresses of all such registrants. Persons whose names appear on this list will automatically become parties to each proceeding in which the Postal Service requests to conduct a market test pursuant to this subpart. Other interested persons may intervene pursuant to § 3001.20 within 28 days after the filing of a formal request made under the provisions of this subpart. Parties may withdraw from the register or a particular case by filing a notice with the Secretary of the Commission.

(c) When the Postal Service files a request under the provisions of this subpart, it shall on that same day effect service by hand delivery of the complete filing to each person registered pursuant to subsection (b) who maintains an address for service within the Washington metropolitan area and serve the complete filing by Express Mail service on all other registrants. Each registrant is responsible for insuring that his or her address remains current.

(d) When the Postal Service files a request under the provisions of this subpart, it shall on that same day send by Express Mail to all participants in the most recent omnibus rate case a notice which briefly describes its proposal. This notice shall indicate on its first page that it is a notice of a market test request to be considered under §§ 3001.161 through 3001.166, and identify the last day for filing a notice of intervention with the Commission.

(e) Within 5 days after receipt of a Postal Service request under the provisions of this subpart, the Commission shall issue a notice of proceeding and provide for intervention by interested parties pursuant to § 3001.20. In the event that a party wishes to dispute a genuine issue of material fact to be resolved in the consideration of the Postal Service's request, that party shall file with the Commission a request for a hearing within the time allowed in the notice of proceeding. The request for a hearing shall state with specificity the fact or facts set forth in the Postal Service's filing that the party disputes, and when possible, what the party believes to be the true fact or facts and the evidence it intends to provide in support of its position. The Commission will hold hearings on a Postal Service request made pursuant to this subpart when it determines that there is a genuine issue of material fact to be resolved, and that a hearing is needed to resolve that issue.

§ 3001.164 Rule for decision.

The Commission will issue a decision on the Postal Service's proposed market test in accordance with the policies of the Postal Reorganization Act, but will not recommend modification of any feature of the proposed market test which the Postal Service has identified in accordance with § 3001.162(g). The purpose of this subpart is to allow for consideration of proposed market tests within 90 days, consistent with the procedural due process rights of interested persons.

§ 3001.165 Data collection and reporting requirements.

In any case in which the Commission has issued a recommended decision in favor of a market test requested by the Postal Service, and the Board of Governors has put the market test recommended by the Commission into effect, the Postal Service shall gather test data and report them to the Commission in accordance with the plan submitted pursuant to § 3001.162(h). If the Postal Service's plan for reporting test data does not provide for periodic reporting during the conduct of the test, the Postal Service shall submit all test data to the Commission no later than 60 days following the conclusion of the test.

§ 3001.166 Suspension, continuation or termination of proceeding.

(a) In any case in which the Commission has issued a recommended

decision in favor of a market test requested by the Postal Service, and the Board of Governors has put the market test recommended by the Commission into effect, the Postal Service may move for suspension of the proceeding in which its request for a permanent change in mail classification is to be considered. The Commission shall grant the Postal Service's motion for suspension if, in the Commission's opinion, it would be reasonable under the circumstances to defer consideration of the request until the information to be produced in connection with the market test becomes available.

(b) At any time during the pendency of a market test recommended by the Commission pursuant to this subpart, or following the completion of such a market test, the Postal Service may move to revise or withdraw its request for a permanent change in mail classification. If the Postal Service moves to revise its request, it shall file with the Commission all data necessary to support its amended request. If the Postal Service moves to withdraw its request, it shall explain the circumstances leading to its motion, but need not produce the test data that would otherwise be submitted pursuant to § 3001.165.

5. Amend Part 3001 by adding Subpart J, Rules for Expedited Review of Requests for Provisional Service Changes of Limited Duration, §§ 3001.172 through 3001.176 to read as follows:

Subpart J—Rules for Expedited Review of Requests for Provisional Service Changes of Limited Duration

§ 3001.171 Applicability.

(a) This section and §§ 3001.172 through 3001.176 apply in cases in which the Postal Service requests that the Commission recommend the establishment of a provisional service which will supplement, but will not alter, existing mail classifications and rates for a limited and fixed duration. The requirements and procedures specified in these sections apply exclusively to the Commission's determination to recommend in favor of or against a provisional service proposed by the Postal Service, and do not supersede the rules applicable to requests for permanent changes in rates, fees, mail classifications, and in the nature of postal services. In administering this subpart, it shall be the policy of the Commission to recommend the introduction of provisional services that enhance the range of postal services available to the public, without producing a material adverse effect overall on postal revenues or costs, and without causing unnecessary or unreasonable harm to competitors of the Postal Service. Except in extraordinary circumstances and for good cause shown, the Commission shall not recommend provisional services of more than two years in duration; however, the Commission may grant a request to extend a provisional service for an additional year if a Postal Service request to establish the provisional service as a permanent mail classification is pending before the Commission.

(b) This section and §§ 3001.172 through 3001.176 are effective November 28, 2001 through November 28, 2006.

§ 3001.172 Filing of formal request and prepared direct evidence.

(a) Whenever the Postal Service determines to request that the Commission submit a decision recommending the establishment of a provisional service of limited and fixed duration, it shall file a request for a change in mail classification pursuant to section 3623 that comports with the requirements of this subpart and of subpart C of the rules of practice. Each formal request shall include the following particular information:

(1) A description of the proposed classification, including proposed Domestic Mail Classification Schedule language and rate schedules;

(2) A statement of the goals and objectives of introducing the proposed provisional service, supported by quantitative projections of anticipated results to the extent practicable.

(3) A statement of those features of the proposed provisional service that, in the opinion of the Postal Service, cannot be modified without significantly reducing the benefits of introducing the proposed service;

(4) An explanation and complete documentation of the development of the rates proposed for the provisional service;

(5) A termination date on which the proposed provisional service will be discontinued;

(6) An estimate of the effect of implementing the proposed provisional service on overall Postal Service costs and revenues during the period in which it is in effect; and

(7) A plan for meeting the data collection and reporting requirements specified in § 3001.175.

(b) If the Postal Service believes that data required to be filed under § 3001.64 are unavailable, it shall explain their unavailability, as required by § 3001.64(a)(2)(i), (ii), and (iv). In particular, if the provisional character of the request bears on the unavailability of the data in question, the Postal Service shall explain in detail the nexus between these circumstances. A satisfactory explanation of the unavailability of data will be grounds for excluding from the proceeding a contention that the absence of the data should form a basis for rejection of the request, unless the party desiring to make such contention

(1) Demonstrates that, having regard to all the facts and circumstances of the case, it was clearly unreasonable for the Postal Service to propose the change in question without having first secured the data which are unavailable, or

(2) Demonstrates other compelling circumstances requiring that the absence of the data in question be treated as bearing on the merits of the proposal.

§ 3001.173 Procedures—expedition of public notice and procedural schedule.

(a) The purpose of this section is to provide a schedule for expediting proceedings in which the Postal Service requests that the Commission recommend the establishment of a provisional service which will supplement, but will not alter, existing mail classifications and rates for a limited and fixed duration.

(b) Persons who are interested in participating in proceedings to consider Postal Service requests to establish a provisional service may register at any time with the Secretary of the Postal Rate Commission, who shall maintain a publicly available list of the names and business addresses of all such registrants. Persons whose names appear on this list will automatically become parties to each proceeding in which the Postal Service requests establishment of a provisional service pursuant to this subpart. Other interested persons may intervene pursuant to § 3001.20 within 28 days after the filing of a formal request made under the provisions of this subpart. Parties may withdraw from the register or a particular case by filing a notice with the Secretary of the Commission.

(c) When the Postal Service files a request under the provisions of this subpart, it shall on that same day effect service by hand delivery of the complete filing to each person registered pursuant to subsection (b) who maintains an address for service within the Washington metropolitan area and serve the complete filing by Express Mail service on all other registrants. Each registrant is responsible for insuring that his or her address remains current.

(d) When the Postal Service files a request under the provisions of this subpart, it shall on that same day send by Express Mail service to all participants in the most recent omnibus rate case a notice which briefly describes its proposal. Such notice shall indicate on its first page that it is a notice of a Request for Establishment of a Provisional Service to be considered under §§ 3001.171 through 3001.176, and identify the last day for filing a notice of intervention with the Commission.

(e) Within 5 days after receipt of a Postal Service request under the provisions of this subpart, the Commission shall issue a notice of proceeding and provide for intervention by interested parties pursuant to § 3001.20. In the event that a party wishes to dispute a genuine issue of material fact to be resolved in the consideration of the Postal Service's request, that party shall file with the Commission a request for a hearing within the time allowed in the notice of proceeding. The request for a hearing shall state with specificity the fact or facts set forth in the Postal Service's filing that the party disputes, and when possible, what the party believes to be the true fact or facts and the evidence it intends to provide in support of its position. The Commission will hold hearings on a Postal Service request made pursuant to this subpart when it determines that there is a genuine issue of material fact to be resolved, and that a hearing is needed to resolve that issue.

§ 3001.174 Rule for decision.

The Commission will issue a decision on the Postal Service's proposed provisional service in accordance with the policies of the Postal Reorganization Act, but will not recommend modification of any feature of the proposed service which the Postal Service has identified in accordance with § 3001.172(a)(iii). The purpose of this subpart is to allow for consideration of proposed provisional services within 90 days, consistent with the procedural due process rights of interested persons.

§ 3001.175 Data collection and reporting requirements.

In any case in which the Commission has issued a recommended decision in favor of a provisional service of limited duration requested by the Postal Service, and the Board of Governors has put the provisional service recommended by the Commission into effect, the Postal Service shall collect and report data pertaining to the provisional service during the period in which it is in effect in accordance with the periodic reporting requirements specified in § 3001.102. If the Postal Service's regular data reporting systems are not revised to include the provisional service during the period of its effectiveness, the Postal Service shall perform, and provide to the Commission on a schedule corresponding to § 3001.102 reports, special studies to provide equivalent information to the extent reasonably practicable.

§ 3001.176 Continuation or termination of provisional service.

At any time during the period in which a provisional service recommended by the Commission and implemented by the Board of Governors is in effect, the Postal Service may submit a formal request that the provisional service be terminated, or that it be established, either as originally recommended by the Commission or in modified form, as a permanent mail classification. Following the conclusion of the period in which the provisional service was effective, the Postal Service may submit a request to establish the service as a mail classification under any applicable subpart of the Commission's rules.

6. Amend Part 3001 by adding Subpart K, Rules for Use of Multi-Year Test Periods, §§ 3001.181–3001.182 to read as follows:

Subpart K—Rules for Use of Multi-Year Test Periods

§ 3001.181 Use of multi-year test period for proposed new services.

(a) The rules in §§ 3001.181 and 3001.182 apply to Postal Service requests pursuant to section 3623 for the establishment of a new postal service, with attendant rates, which in the estimation of the Postal Service cannot generate sufficient volumes and revenues to recover all costs associated with the new service in the first full fiscal year of its operation. In administering these rules, it shall be the Commission's policy to adopt tests periods of up to 5 fiscal years for the purpose of determining breakeven for newly introduced postal services where the Postal Service has presented substantial evidence in support of the test period proposed.

(b) This section and § 3001.182 are effective November 28, 2001 through November 28, 2006.

§ 3001.182 Filing of formal request and prepared direct evidence.

In filing a request for establishment of a new postal service pursuant to section 3623, the Postal Service may request that its proposal be considered for a test period of longer duration than the test period prescribed in § 3001.54(f)(2). Each such request shall be supported by the following information:

(a) The testimony of a witness on behalf of the Postal Service, who shall provide:

(1) A complete definition of the multi-year test period requested for the proposed new service;

(2) A detailed explanation of the Postal Service's preference of a multi-year test period, including the bases of the Service's determination that the test period prescribed in § 3001.54(f)(2) would be inappropriate; and

(3) A complete description of the Postal Service's plan for achieving an appropriate contribution to institutional costs from the new service by the end of the requested test period.

(b) Complete documentary support for, and detail underlying, the test period requested by the Postal Service, including:

(1) Estimated costs, revenues, and volumes of the proposed new service for the entire requested test period;

(2) Return on investment projections and all other financial analyses prepared in connection with determining the cost and revenue impact of the proposed new service; and

(3) Any other analyses prepared by the Postal Service that bear on the overall effects of introducing the proposed new service during the requested test period.

[FR Doc. 01–27090 Filed 10–26–01; 8:45 am]

BILLING CODE 7710–FW–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[AL–T5–2001–02; FRL–7091–2]

Clean Air Act Final Full Approval of Operating Permit Programs; Alabama, City of Huntsville, and Jefferson County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final full approval.

SUMMARY: EPA is promulgating full approval of the operating permit programs of the Alabama Department of Environmental Management, the City of Huntsville's Division of Natural Resources, and the Jefferson County Department of Health. These programs were submitted in response to the directive in the 1990 Clean Air Act (CAA) Amendments that permitting authorities develop, and submit to EPA, programs for issuing operating permits

to all major stationary sources and to certain other sources within the permitting authorities' jurisdiction. On November 15, 1995, EPA granted interim approval to the Alabama, Huntsville, and Jefferson County title V operating permit programs. These agencies revised their programs to satisfy the conditions of the interim approval, and EPA proposed full approval in the **Federal Register** on August 28, 2001. EPA did not receive any comments on the proposed action, so this action promulgates final full approval of the Alabama, Huntsville, and Jefferson County operating permit programs.

EFFECTIVE DATE: November 28, 2001.

ADDRESSES: Copies of the Alabama, Huntsville, and Jefferson County submittals and other supporting documentation used in developing the final full approval are available for inspection during normal business hours at EPA, Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Interested persons wanting to examine these documents, which are contained in EPA docket number AL–T5–2001–01, should make an appointment at least 48 hours before the visiting day.

FOR FURTHER INFORMATION CONTACT: Ms. Kim Pierce, EPA Region 4, at (404) 562–9124 or *pierce.kim@epa.gov/.*

SUPPLEMENTARY INFORMATION: This section provides additional information by addressing the following questions:

What is the operating permit program?
Why is EPA taking this action?
What is involved in this final action?

What Is the Operating Permit Program?

Title V of the CAA Amendments of 1990 required all state and local permitting authorities to develop operating permit programs that met certain federal criteria. In implementing the title V operating permit programs, the permitting authorities require certain sources of air pollution to obtain permits that contain all applicable requirements under the CAA. The focus of the operating permit program is to improve enforcement by issuing each source a permit that consolidates all of the applicable CAA requirements into a federally enforceable document. By consolidating all of the applicable requirements for a facility, the source, the public, and the permitting authorities can more easily determine what CAA requirements apply and how compliance with those requirements is determined.

Sources required to obtain an operating permit under the title V program include: ''major'' sources of air pollution and certain other sources specified in the CAA or in EPA's implementing regulations. For example, all sources regulated under the acid rain program, regardless of size, must obtain operating permits. Examples of major sources include those that have the potential to emit 100 tons per year or more of volatile organic compounds (VOCs), carbon monoxide, lead, sulfur dioxide, nitrogen oxides (NO_X), or particulate matter (PM_{10}); those that emit 10 tons per year of any single hazardous air pollutant (specifically listed under the CAA); or those that emit 25 tons per year or more of a combination of hazardous air pollutants (HAPs). In areas that are not meeting the National Ambient Air Quality Standards for ozone, carbon monoxide, or particulate matter, major sources are defined by the gravity of the nonattainment classification. For example, in ozone nonattainment areas classified as ''serious,'' major sources include those with the potential of emitting 50 tons per year or more of VOCs or NO_X.

Why Is EPA Taking This Action?

Where a title V operating permit program substantially, but not fully, met the criteria outlined in the implementing regulations codified at 40 Code of Federal Regulations (CFR) part 70, EPA granted interim approval contingent on the state revising its program to correct the deficiencies. Because the Alabama, Huntsville, and Jefferson County programs substantially, but not fully, met the requirements of part 70, EPA granted interim approval to these programs in a rulemaking (60 FR 57346) published on November 15, 1995. The interim approval notice described the conditions that had to be met in order for the Alabama, Huntsville, and Jefferson County programs to receive full approval. Interim approval of these programs expires on December 1, 2001.

What Is Involved in This Final Action?

The Alabama Department of Environmental Management, the City of Huntsville's Division of Natural Resources, and the Jefferson County Department of Health have fulfilled the conditions of the interim approval granted on November 15, 1995. On August 28, 2001, EPA published a notice in the **Federal Register** (see 66 FR 45253) proposing full approval of the Alabama, Huntsville, and Jefferson County title V operating permit programs, and proposing approval of other program revisions. Since EPA did not receive any comments on the proposal, this action promulgates final full approval of the Alabama, Huntsville, and Jefferson County programs and final approval of the other program changes described in the proposal.

Administrative Requirements

A. Docket

Copies of the Alabama, Huntsville, and Jefferson County submittals and other supporting documentation used in developing the final full approval are contained in docket files maintained at the EPA Region 4 office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed full approval. The primary purposes of the docket are: (1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the approval process, and (2) to serve as the record in case of judicial review. The docket files are available for public inspection at the location listed under the **ADDRESSES** section of this document.

B. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

C. Executive Order 13045

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

This rule is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined in Executive Order 12866, and it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13132

This rule does not have Federalism implications because it will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and

responsibilities among the various levels of government, as specified in Executive Order 13132, ''Federalism'' (64 FR 43255, August 10, 1999). This rule merely approves existing requirements under state law, and does not alter the relationship or the distribution of power and responsibilities between the state and the federal government established in the CAA.

E. Executive Order 13175

This rule does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes, as specified by Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000).

F. Executive Order 13211

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), because it is not a significantly regulatory action under Executive Order 12866.

G. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because operating permit program approvals under section 502 of the CAA do not create any new requirements but simply approve requirements that the state is already imposing. Therefore, because this approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

H. Unfunded Mandates Reform Act

Under sections 202 of the Unfunded Mandates Reform Act of 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.

EPA has determined that the approval action proposed does not include a federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This federal action approves pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

I. 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.

In reviewing operating permit programs, EPA's role is to approve state choices, provided that they meet the criteria of the CAA and EPA's regulations codified at 40 CFR part 70. In this context, in the absence of a prior existing requirement for the state to use VCS, EPA has no authority to disapprove an operating permit program for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews an operating permit program, to use VCS in place of an operating permit program that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of NTTAA do not apply.

J. Paperwork Reduction Act

This action will not impose any collection of information subject to the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., other than those previously approved and assigned OMB control number 2060–0243. For additional information concerning these requirements, see 40 CFR part 70. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

K. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of 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).

List of Subjects in 40 CFR Part 70

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

Authority: 42 U.S.C. 7401–7671q.

Dated: October 18, 2001.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

For reasons set out in the preamble, Appendix A of part 70 of title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

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

2. Appendix A to part 70 is amended by revising the entry for Alabama to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Alabama

(a) Alabama Department of Environmental Management:

(1) Submitted on December 15, 1993, and supplemented on March 3, 1994; March 18, 1994; June 5, 1995; July 14, 1995; and August 28, 1995; interim approval effective on December 15, 1995; interim approval expires on December 1, 2001.

(2) Revisions submitted on July 19, 1996; April 9, 1997; August 4, 1999; January 10, 2000; and May 11, 2001. The rule revisions contained in the July 19, 1996; January 10,

2000; and May 11, 2001 submittals adequately addressed the conditions of the interim approval which expires on December 1, 2001. The State is hereby granted final full approval effective on November 28, 2001.

(b) City of Huntsville Division of Natural Resources:

(1) Submitted on November 15, 1993, and supplemented on July 20, 1995; interim approval effective on December 15, 1995; interim approval expires on December 1, 2001.

(2) Revisions submitted on March 21, 1997; July 21, 1999; December 4, 2000; February 22, 2001; April 9, 2001; and September 18, 2001. The rule revisions contained in the March 21, 1997; April 9, 2001; and September 18, 2001 submittals adequately addressed the conditions of the interim approval which expires on December 1, 2001. The City is hereby granted final full approval effective on November 28, 2001.

(c) Jefferson County Department of Health:

(1) Submitted on December 14, 1993, and supplemented on July 14, 1995; interim approval effective on December 15, 1995; interim approval expires on December 1, 2001.

(2) Revisions submitted on February 5, 1998; September 20, 1999; August 8, 2000; March 30, 2001; May 18, 2001; and September 11, 2001. The rule revisions contained in the August 8, 2000; May 18, 2001; and September 11, 2001 submittals adequately addressed the conditions of the interim approval which expires on December 1, 2001. The County is hereby granted final full approval effective on November 28, 2001.

* * * * *

[FR Doc. 01–27105 Filed 10–26–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[WT Docket No. 97–82; FCC 01–270]

Competitive Bidding Procedures

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document the Commission adopts modifications to its competitive bidding ''anti-collusion'' rule. These modifications codify Commission practices with respect to application of the anti-collusion rule and require applicants to report to the Commission prohibited communications.

DATES: Effective November 28, 2001.

FOR FURTHER INFORMATION CONTACT: David Hu of the Auctions and Industry Analysis Division at (202) 418–0660.

SUPPLEMENTARY INFORMATION: This is a summary of a Seventh Report and Order (*7th R&O*) in WT Docket No. 97–82, adopted on September 19, 2001 and released on September 27, 2001. The full text of this document is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

I. Introduction

1. In the *7th R&O,* the Commission adopts modifications to § 1.2105(c) of the Commission's rules, the competitive bidding ''anti-collusion rule.'' Specifically, the Commission amends the rule so that its language clearly reflects the Commission's practice of prohibiting communications regarding bids or bidding strategies only between auction applicants that have applied to bid on licenses in any of the same geographic areas. In addition, the Commission amends the rule to (i) clarify that it prohibits an auction applicant from discussing a competing applicant's bids or bidding strategies even if the first applicant does not discuss its own bids or bidding strategies, and (ii) require auction applicants that make or receive a prohibited communication of bids or bidding strategies to report the communication immediately to the Commission in writing.

II. Background

2. The Commission adopted § 1.2105(c)(1) to deter anticompetitive conduct during auctions of spectrum licenses and to ensure the competitiveness of post-auction markets. The Commission's anti-collusion rule seeks to foster a level competitive playing field during auctions and to ''ensure that the government receives a fair market price for the use of the spectrum.'' In promulgating the rule, the Commission was particularly concerned that some firms might engage in behavior that would unfairly disadvantage other bidders. Communications that violate § 1.2105(c)(1) have the potential to undermine the competitiveness of our auction process and public confidence in the integrity of that process.

3. In the Third Further Notice of Proposed Rule Making (*FNPRM*), 65 FR 6113 (February 8, 2000) the Commission proposed to amend § 1.2105(c)(1) to prohibit an auction applicant from discussing another applicant's bids or bidding strategies even if the first applicant does not discuss or disclose its own bids or bidding strategies. The Commission also proposed to amend § 1.2105(c) to require any auction applicant that makes or receives a communication of bids or bidding strategies prohibited under § 1.2105(c)(1) to report such a communication to the Commission promptly. In addition, the Commission sought comment on whether other changes to § 1.2105(c)(1) may be warranted at this time in light of Congress's mandate that the Commission ensure competitive auctions. The Commission received one comment on the amendments proposed in the *FNPRM.*

III. Discussion

A. Amendments to § 1.2105(c)(1)

4. *Background.* Subject to certain exceptions, § 1.2105(c)(1) prohibits auction applicants that have applied to bid on any common license area from communicating their bids or bidding strategies with each other from the short-form application filing deadline to the post-auction down payment deadline, unless such applicants are members of a bidding consortium or other joint bidding agreement reported on their short-form applications. In other words, if two auction applicants (that have not entered into an agreement and identified each other on the FCC Form 175) are each eligible to bid on numerous license areas but there is only one license area for which they are both eligible to bid, they may not discuss or disclose to each other their bids or bidding strategies relating to any license area that either of them is eligible to bid on.

5. *Discussion. Applicants subject to § 1.2105(c)(1).* Section 1.2105(c)(1) of the Commission's rules states that ''all applicants'' are prohibited from discussing or disclosing their bids or bidding strategy from the short-form application filing deadline until after the down payment deadline. Notwithstanding the term ''all applicants,'' the Commission has applied the prohibitions of the rule only to auction applicants that have applied to bid for licenses in any of the same geographic license areas, and thus are competing applicants. Thus, as noted, even if two auction applicants that have not identified each other as parties to an agreement on the FCC Form 175 are each eligible to bid on only one license area in common, they may not discuss or disclose to each other their bids or bidding strategies relating to any license area that either of them is eligible to bid

on. For example, two applicants not listed on each other's short-form applications for an auction of broadband PCS licenses may not discuss bids or bidding strategies with each other if they are bidding for licenses in any of the same MTAs or BTAs, even if they are not bidding for the same frequency blocks. On the other hand, auction applicants that have not applied to bid on licenses in any of the same geographic areas, and thus are not competing applicants, are not subject to the prohibitions of § 1.2105(c)(1).

6. The Commission finds that it would be helpful to auction applicants to amend § 1.2105(c)(1) so that it accurately reflects the Commission's application of the rule. Thus, the Commission amends § 1.2105(c)(1) to make clear that only auction applicants that have applied for licenses in any of the same geographic license areas are prohibited from discussing with or disclosing to each other their bids or bidding strategy. The Commission also cautions auction applicants that apply to bid for licenses in any of the same geographic license areas (and that are not listed on each other's FCC Form 175) against indirectly communicating their bids or bidding strategies to each other through third-party discussions or disclosures to other auction applicants that have not applied to bid on licenses in any of the same geographic license areas.

7. *Communications regarding other applicants' bids or bidding strategies.* In the *Western PCS Order,* 14 FCC Record 21571 (1999), the Commission provided auction applicants with official notice that § 1.2105(c)(1) prohibits an auction applicant from cooperating or collaborating with respect to, or discussing or disclosing, another applicant's bids or bidding strategies. Thus, an auction applicant may violate § 1.2105(c)(1) even if it does not discuss its own bids or bidding strategies. Nevertheless, the Commission stated in the *FNPRM* that it believes that auction applicants would benefit if the text of the rule plainly stated that it prohibits an auction applicant from discussing another applicant's bids or bidding strategies even if it does not discuss or disclose its own bids or bidding strategies.

8. The Commission amends § 1.2105(c)(1) to clarify the prohibition against an auction applicant cooperating or collaborating with respect to, discussing with, or disclosing to a competing applicant the substance of the bids or bidding strategies of any competing applicant. The Commission believes that the rule's prohibition against discussing, or disclosing, bids or bidding strategy would have minimal deterrent force if an applicant to whom a competing applicant's bidding information is disclosed could discuss such information with either that or another competing applicant without violating the rule. For instance, absent such a prohibition, it would be easy to circumvent the rule's prohibitions as Bidder A could pass on to competing Bidder C bidding strategy information of Bidder B with whom Bidder A has a bidding agreement. The Commission believes that an applicant's discussion with a competing applicant of any other competing applicant's bids or bidding strategy could have a deleterious effect on the integrity and competitiveness of our auctions and that it is therefore essential to explicitly prohibit such discussions.

B. Required Disclosure of Communications Regarding Bids or Bidding Strategies

9. *Background.* Whenever the information furnished in a pending application is no longer substantially accurate and complete in all significant respects, § 1.65(a) of the Commission's rules requires the applicant to amend the application so as to furnish additional or corrected information ''as promptly as possible and in any event within 30 days * * *.'' Pursuant to § 1.65(a), auction applicants are required to maintain the accuracy and completeness of their pending short-form applications. Because the short-form application contains a certification under penalty of perjury that the applicant has not entered and will not enter into any agreements other than those identified in its application, auction applicants that engage in communications of bids or bidding strategies that result in a bidding agreement, arrangement or understanding not already identified on their short-form applications are required to promptly disclose any such agreement, arrangement or understanding to the Commission by amending their pending applications. Thus, even though competing applicants are prohibited by § 1.2105(c)(1) from communicating their bids or bidding strategies to each other after the short-form application filing deadline, applicants that engage in such prohibited discussions are nonetheless required by § 1.65(a) to promptly disclose any resulting agreements or understandings by amending their pending applications. Failure to make the notification required by § 1.65(a) would constitute a separate violation of our rules in addition to the underlying violation of § 1.2105(c)(1).

10. In the *FNPRM,* the Commission sought comment on whether the integrity and competitiveness of its auction process would be enhanced if it required auction applicants that make or receive communications prohibited under § 1.2105(c)(1) to report promptly such communications to the Commission even if the communications do not result in an agreement, arrangement or understanding that must be reported to the Commission under § 1.65(a). The Commission invited comment on whether would-be disseminators of prohibited bidding or bidding strategy information, knowing that recipients of such prohibited information would have an affirmative duty to disclose promptly such communications to the Commission, would be deterred from making such communications. The Commission also solicited comment on any potential burden that may be associated with such a reporting requirement, and the appropriate deadline for making such a report.

11. *Discussion.* The Commission amends § 1.2105(c) to require auction applicants that make or receive a communication of bids or bidding strategies prohibited under § 1.2105(c)(1) to report such a communication to the Commission immediately, even if the communication does not result in an agreement, arrangement or understanding that must be reported under § 1.65(a). As it noted in the *FNPRM,* the Commission has found that even when a prohibited communication of bids or bidding strategies is limited to one applicant's bids or bidding strategies, it may unfairly disadvantage the other bidders in the market by creating an impermissible asymmetry of information. Thus, when one bidder is privy to a competing bidder's strategic bidding information without reporting this fact, it may use such information to manipulate the auctions process and gain an unfair competitive advantage over other bidders in the market who are unable to access, analyze, and act upon this strategic information in making bidding decisions. Section 1.2105(c)(1) of the Commission's rules attempts to address this concern by prohibiting all auction applicants that have applied to bid on any of the same geographic areas from cooperating or collaborating with respect to, discussing or disclosing to each other in any manner the substance of their bids or bidding strategies. The Commission has encountered instances of violations of § 1.2105. In some instances, there has been concern expressed about a bidder's

obligation to report information received from another bidder that potentially violates the Commission's rule, and it has previously counseled applicants that the safest course of action for a recipient of a prohibited communication during the period in which § 1.2105(c) prohibitions are in effect would be to terminate the discussion and promptly report the communication to the Commission. Therefore, the Commission further clarifies the anti-collusion rule by including a reporting requirement, as a deterrent to would-be disseminators of prohibited information regarding bids or bidding strategies. This will, the Commission believes, make clear the responsibility to report such behavior and will thereby enhance the competitiveness and fairness of our spectrum auctions.

12. Thus, an applicant's duty under § 1.2105(c) is two-fold. Applicants may not engage in prohibited communications with competing applicants, and they are obligated to report to the Commission all communications prohibited under § 1.2105(c)(1). Thus, an applicant's failure to report a prohibited communication pursuant to § 1.2105(c)(6) may constitute a rule violation distinct from any act of collusion that violates § 1.2105(c)(1). Moreover, the § 1.2105(c)(6) reporting requirement the Commission adopts today applies even if the communication of bids or bidding strategies does not result in a bidding arrangement, agreement or understanding that must be reported to the Commission under § 1.65(a). As explained previously, applicants have always had, under § 1.65(a), an affirmative duty to report any communications of bids or bidding strategies that result in a bidding arrangement, agreement or understanding after the filing of a short-form application. By requiring applicants to update pending applications to reflect such prohibited collusive agreements and communications, the Commission has sought to ensure the integrity and transparency of its auction processes. By now amending its rules to include an affirmative reporting requirement that applies even if a communication does not rise to the level of that which must be reported under § 1.65(a), the Commission can ensure that all bidders remain on a level playing field throughout the course of an auction. The reporting requirement the Commission adopts today does not relieve any applicant from its duty pursuant to § 1.65(a) to update its pending application any time a communication of bids or bidding strategies results in an arrangement, agreement, or understanding. Of course, the fact that a party complies with the reporting requirements of § 1.65(a) and § 1.2105(c)(6) will not insulate it from any sanctions that may be appropriate in connection with a violation of the § 1.2105(c)(1) prohibition against collusive communications.

13. The Commission disagrees with one commenter's suggestion that recipients of bidding information should be exempt from the requirement to report such communications to the Commission. Section 1.2105(c) does not distinguish between initiators and recipients in terms of their duty to avoid a collusive communication. Rather, the anti-collusion rule focuses on the content of the communication (i.e., the discussion or disclosure must involve direct or indirect information that affects, or could affect, bids or bidding strategy, or the negotiation of settlement agreements) that occurs between auction applicants for any of the same geographic license areas after the short-form filing deadline. Thus, all auction applicants that have applied for a license in the same geographic area, and have not reported in their short-form applications that they have an agreement with each other, must affirmatively avoid all communications with each other that disclose their or a competing applicant's bids or bidding strategy. In light of the fact that the Commission's current rules do not focus on whether a party is initiating or receiving a communication, the Commission does not believe that it should limit the reporting requirement it adopts today to initiators of prohibited communications. Moreover, because initiators of collusive communications are less likely to report such communications, the Commission considers recipients of prohibited oral or written communications regarding bids or bidding strategies to be an important deterrent against collusive behavior. The Commission also believes that recipients should be held to the same reporting standard as initiators because, even if a recipient does not reach an agreement or understanding with the initiator, a recipient nevertheless derives substantial benefit from obtaining details of a competitor's bids or bidding strategy prior to or during an auction. If the Commission were to allow recipients to possess strategic bidding information that other applicants are not privy to, it would unfairly disadvantage other bidders in the market by sanctioning an asymmetry of information that could be used to manipulate the auction process. Therefore, the mere occurrence of a communication by or among auction applicants for the same geographic license area about their own or a competing applicant's bids or bidding strategy triggers the reporting requirement.

14. The Commission does not believe that there is any merit to one commenter's assertion that compliance with this reporting requirement will expose recipients of communications to substantial legal liability. In the past the Commission has indicated that auction applicants, rather than the Commission, are in the best position to determine in the first instance when communications may constitute potential violations of the rule. The Commission continues to believe that this is the case and that, rather than requiring it to take on the impossible task of screening all applicant communications, it should place the responsibility for identifying potentially unauthorized communications on auction applicants. Applicants, during the course of their day-to-day operations, are better equipped to identify and report such communications. Nonetheless, the Commission emphasizes that applicants are not responsible for deciding whether a violation of the anti-collusion rule has occurred. Thus, the purpose of the reporting requirement the Commission adopts today is to obligate parties to notify the Commission of communications that appear to violate the anti-collusion rule and to allow the Commission to determine whether a violation has occurred. The determination of whether a violation of the rule has occurred rests with the Commission, not with bidders. Thus, while the reporting requirement places an affirmative duty on all auction applicants to report what they perceive to be prohibited communications, auction applicants are required only to act in good faith and to report truthfully the facts and circumstances of what they perceive to be a communication covered by § 1.2105(c). The Commission will then investigate these reports and reach a judgment as to whether a violation has occurred. By simply reporting the facts, auction applicants can insulate themselves from liability.

15. The Commission also finds that any burden associated with the reporting requirement it establishes today will be slight, particularly in comparison with the potential benefits to the auction process and bidders. Applicants will be required only to submit a letter to the Commission

describing the facts of a communication that appears to be prohibited.

16. In sum, the Commission amends § 1.2105(c) to require all auction applicants to report prohibited discussions or disclosures regarding bids or bidding strategy to the Commission in writing immediately, but in no case later than five business days after the communication occurs. Thus, an auction applicant must report a prohibited communication within five business days even if the communication does not result in an agreement or understanding regarding bids or bidding strategy. Although the Commission believes that applicants generally should need less than five business days to make such reports, it will not impose a shorter deadline because it finds that there may be circumstances in which applicants, particularly small businesses, may need five business days to file a report. An auction applicant that receives a communication prohibited under § 1.2105(c)(1) orally should respond immediately and unequivocally that it is unwilling to participate in any violation of § 1.2105(c)(1). If a prohibited communication is received other than orally, an auction applicant should respond immediately in writing that it is unwilling to participate in any violation of § 1.2105(c)(1). In either case, the auction applicant must report the improper communication to the Commission in writing within five business days after the communication occurs.

IV. Conclusion

17. In the *7th R&O*, the Commission amends § 1.2105(c)(1) of the Commission's rules to clarify that the rule prohibits only auction applicants that have applied to bid for licenses in any of the same geographic license areas from cooperating or collaborating with respect to, or discussing or disclosing to each other bids or bidding strategies. The Commission also amends the rule to clarify that it prohibits such auction applicants from cooperating or collaborating with respect to, or discussing or disclosing to each other any competing applicant's bids or bidding strategies. Thus, the rule may be violated even if an applicant does not discuss or disclose its own bids or bidding strategies. Finally, the Commission amends § 1.2105(c) to require any auction applicant that makes or receives a communication of bids or bidding strategies prohibited under § 1.2105(c)(1) of our rules to report such communication to the Commission in writing immediately, but in no case later than five business days after the communication occurs.

V. Procedural Matters

A. Regulatory Flexibility Act

18. The Commission has prepared a Final Regulatory Flexibility Analysis (''FRFA'') of the possible significant economic impact on small entities of the rule amendments adopted herein. The Commission's Reference Information Center, Consumer Information Bureau, will send a copy of the *7th R&O*, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

B. Final Paperwork Reduction Act of 1995 Analysis

19. The *7th R&O* contains a new information collection, which was proposed in the *FNPRM*. As required by the Paperwork Reduction Act of 1995, the Commission sought comment from the public and from the Office of Management and Budget (OMB) on this proposed change to the Commission's information collection requirements. This new information collection was submitted to OMB for approval, as prescribed by the Paperwork Reduction Act. On October 17, 2001, the Commission received emergency approval from OMB for the information collection contained in the rules (OMB No. 3060–0995).

C. Ordering Clauses

20. Authority for issuance of the *7th R&O* is contained in sections 4(i), 4(j), 303(r), 309(j) and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303(r), 309(j) and 403.

21. Accordingly, it is ordered that part 1 of the Commission's rules is amended as specified herein and shall become effective November 28, 2001.

22. It is further ordered that the Commission's Reference Information Center, Consumer Information Bureau, shall send a copy of the *7th R&O*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

VI. Final Regulatory Flexibility Analysis

23. As required by the Regulatory Flexibility Act (''RFA''), an Initial Regulatory Flexibility Analysis (''IRFA'') was incorporated in the *FNPRM* in this proceeding. The Commission sought written public comment on the proposals in the *FNPRM*, including comment on the IRFA. This present Final Regulatory Flexibility Analysis (''FRFA'') conforms to the RFA.

24. An RFA certification, rather than an analysis, is appropriate where ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' The Commission believes that the rule amendments it has adopted will not have a significant economic impact on a substantial number of small entities. The Commission nonetheless voluntarily performs this FRFA in order to thoroughly explain this conclusion and to address concerns raised in comments submitted by the Small Business Administration (''SBA''). The Commission discusses our conclusion further in section B, *infra*.

A. Need for and Objectives of the Report and Order

25. The amendments to 47 CFR 1.2105(c) adopted in the *7th R&O* are intended to enhance the competitiveness and integrity of the Commission's auctions. First, the Commission amends § 1.2105(c)(1) so that its language clearly reflects the Commission's application of the rule to prohibit communications regarding bids or bidding strategies only between applicants that have applied to bid on licenses in any of the same geographic areas. Second, the Commission clarifies § 1.2105(c)(1) to explicitly prohibit auction applicants that have applied to bid on licenses in any of the same geographic areas from discussing with or disclosing to each other any competing applicant's bids or bidding strategies. Although the Commission has previously interpreted the rule to prohibit an applicant's discussion of a competing applicant's bids or bidding strategies, it believes that all auction applicants would benefit from this amendment, which ensures that the text of the rule is unambiguous. Third, the Commission amends § 1.2105(c) to require any auction applicant that makes or receives a communication of bids or bidding strategies prohibited by 47 CFR 1.2105(c)(1) to report such communication to the Commission. The Commission believes that this reporting requirement will act as a deterrent to would-be disseminators of prohibited information and will thereby enhance the competitiveness and fairness of our auctions.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

26. The SBA filed comments in response to the IRFA. The SBA asserts that the Commission failed to describe the impact its proposed rules would

have on small businesses as required by the RFA. Further, the SBA states that the Commission's proposals would expand the obligations that applicants must meet when they participate in an auction. The SBA states that the amended anti-collusion rule would impose reporting requirements on applicants, cover a broader range of communications, and increase the risk of punitive action, including monetary forfeitures. The SBA asserts that small businesses have far fewer financial resources than their larger counterparts and they are therefore less able to absorb the costs of forfeitures. According to the SBA, the Commission did not discuss the potential burden posed by the risk of punishment as it should have. The SBA also states that the Commission failed to propose any alternatives designed to minimize the impact of its proposed rules on small business, as the RFA requires.

27. The Commission acknowledges that the amendment to § 1.2105(c) that it proposed in the *FNPRM,* and that it adopts today, imposes a reporting requirement on all auction participants, including small businesses. However, the Commission has previously urged parties to report communications prohibited under § 1.2105(c)(1) to the Commission, and parties have done so in the past. Thus, the Commission views the adoption of this requirement as consistent with conduct that the Commission has urged on applicants in the past. Further, the amendment to § 1.2105(c)(1) that the Commission adopts today to prohibit auction applicants from discussing the bids or bidding strategies of competing applicants merely clarifies the text of the rule to make it consistent with the interpretation it announced in the *Western PCS Order.* Nonetheless, the Commission recognizes that these amendments to our anti-collusion rule impose increased duties and present the possibility of sanctions against auction applicants, including small entities, that do not comply with the revised rules.

28. Based on past experience, however, the Commission does not believe the impact of these amendments on small businesses will be significant. In all of its auctions held to date except for the auctions for broadcast licenses, 1,513 out of a total of 1,881 qualified bidders have been small businesses as that term has been defined under rules adopted by the Commission for specific services, but only two forfeitures have been assessed in all, *i.e.,* against businesses of all sizes. Thus, despite the large number of small businesses that have participated in the auctions program since its inception, an extremely small percentage of auction participants have made or received communications that have violated the anti-collusion rule. The Commission believes that the vast majority of applicants comply with the its rules and do not engage in prohibited behavior, and that this will continue to be the case. Therefore, the Commission expects these amendments to have little impact on small businesses generally. The amended rules will deter the few that would try to gain an advantage unfairly by creating an asymmetry of information that is detrimental to other participants.

29. Moreover, while the Commission acknowledges that the reporting requirement it adopts today constitutes a potential burden, it expects the actual burden to be slight. In addition to the fact that the Commission expects there to be few instances of prohibited communications to be reported, it notes that the new filing requirement will place a *de minimis* reporting burden upon auction participants because it merely requires those who make or receive a communication of bids or bidding strategies prohibited by § 1.2105(c)(1) to send a letter to the Secretary. Furthermore, section 223 of the SBREFA allows agencies to reduce or eliminate fines or other enforcement actions taken against small entities. Indeed, section 223 requires agencies to provide for the reduction, and under appropriate circumstances for the waiver, of civil penalties for violations of a statutory or regulatory requirement by a small entity. Under appropriate circumstances, an agency may consider ability to pay in determining penalty assessments on small entities. In amending § 1.80 of its rules in 1997 to incorporate guidelines for assessing forfeitures, the Commission also made clear that its forfeiture policies are consistent with this approach. The Commission cannot in good conscience alter the uniform standards of behavior required of all auction participants, even if to do so might assist small businesses. Public confidence in the fairness of our auction process could be undermined if all entities were not subject to the same standards of behavior. However, in light of the provisions of the SBREFA and for the other reasons discussed, the Commission concludes that the amendments it adopts today are not likely to have a significant economic impact on a substantial number of small entities.

30. The Commission also believes generally that any burden associated with these rule amendments is outweighed by the advantages presented by a fair auction process that does not allow some bidders to gain an advantage over others through collusive behavior. Thus, the Commission finds that the rule amendments that it adopts today will benefit all bidders, including small businesses. First, the Commission believes that the amendments will enhance the competitiveness and fairness of its auction process to the benefit of small auction applicants. Second, under the amendments, general confidence in the integrity of our auctions should increase. In short, the Commission concludes that the public policy benefits of the amendments substantially outweigh the minimal impact the reporting requirement imposes on small entities.

C. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

31. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small organization,'' ''small business,'' and ''small governmental jurisdiction.'' The term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 1992, there were approximately 275,801 small organizations. ''Small governmental jurisdiction'' generally means ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.'' As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, the Commission estimates that 81,600 (91 percent) are small entities. According to SBA reporting data, there were 4.44 million small business firms nationwide in 1992.

32. The amendments to § 1.2105(c) adopted in the *7th R&O* will apply to all entities that apply to participate in Commission auctions, including small

entities. The number of entities that may apply to participate in future Commission auctions is unknown. The number of small businesses that have participated in prior auctions has varied. As stated previously, small businesses, as defined under the Commission's rules, have accounted for 1,513 out of a total of 1,881 qualified bidders in all prior auctions, not including broadcast auctions. Given these statistics, the Commission expects a large percentage of participants in its auctions program generally to be small businesses in the future, although this may not be the case in each individual auction.

D. Description of Reporting, Recordkeeping and Other Compliance Requirements

33. As a result of the actions taken in the *7th R&O,* disseminators and recipients of communications prohibited by § 1.2105(c)(1) will be required to report such communications to the Commission, in writing, within five business days after the communication occurs.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

34. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives, among others: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. In the *7th R&O,* the Commission amends § 1.2105(c) to require auction applicants that make or receive a communication of bids or bidding strategies prohibited by § 1.2105(c)(1) of its rules to report such a communication in writing to the Commission immediately, but in no case later than five business days after the communication occurs. The Commission considered, but decided against, imposing a shorter deadline for such reports. The Commission believes that five business days will lessen the burden of the reporting requirement, particularly for small businesses. The Commission also considered not applying the requirement to recipients of prohibited communications. However, the Commission believes that recipients of prohibited communications are more likely to report such communications and thus serve as an important deterrent against collusive behavior. Moreover, the Commission believes that recipients of prohibited communications must be held to the same enforcement standard as initiators, because a recipient may derive substantial unfair benefit from obtaining details of a competitor's bids or bidding strategy.

F. Report to Congress

35. The Commission will send a copy of the *7th R&O,* including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the *7th R&O,* including FRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 1 as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: Sections 4, 303, and 332, 48 Stat. 1066, 1082, as amended: 47 U.S.C. 154, 303, and 332, unless otherwise noted.

2. Section 1.2105 is amended by revising paragraph (c)(1), redesignating paragraph (c)(6) as (c)(7) and adding new paragraph (c)(6) to read as follows:

§ 1.2105 Bidding application and certification procedures; prohibition of collusion.

* * * * *

(c) *Prohibition of collusion.* (1) Except as provided in paragraphs (c)(2), (c)(3), and (c)(4) of this section, after the short-form application filing deadline, all applicants for licenses in any of the same geographic license areas are prohibited from cooperating or collaborating with respect to, discussing with each other, or disclosing to each other in any manner the substance of their own, or each other's, or any other competing applicants' bids or bidding strategies, or discussing or negotiating settlement agreements, until after the down payment deadline, unless such applicants are members of a bidding consortium or other joint bidding arrangement identified on the bidder's short-form application pursuant to § 1.2105(a)(2)(viii).

* * * * *

(6) Any applicant that makes or receives a communication of bids or bidding strategies prohibited under paragraph (c)(1) of this section shall report such communication in writing to the Commission immediately, and in no case later than five business days after the communication occurs. Such reports shall be filed with the Office of the Secretary, and a copy shall be sent to the Chief of the Auctions and Industry Analysis Division, Wireless Telecommunications Bureau.

* * * * *

[FR Doc. 01–27103 Filed 10–26–01; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 66, No. 209
Monday, October 29, 2001

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–SW–17–AD]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron, Inc.—Manufactured Model OH–13E, OH–13H, and OH–13S Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes superseding an existing airworthiness directive (AD) for Model OH–13E, OH–13H, and OH–13S helicopters manufactured by Bell Helicopter Textron, Inc. (BHTI). That AD currently requires either recurring liquid penetrant or eddy current inspections of the main rotor blade grip (grip) threads for a crack. If a crack is detected, that AD requires, before further flight, replacing the cracked grip with an airworthy grip. That AD also establishes a retirement life of 1200 hours time-in-service (TIS) for each grip. This proposed AD would add two part numbers (P/N) to the applicability and requires only recurring eddy current inspections of the grip threads. This proposed AD would also require reporting any results of the grip inspections to the FAA Rotorcraft Certification Office. This proposal is prompted by the issuance of an AD for the civil BHTI Model 47 helicopters and the results of an accident investigation, an operator survey conducted by a trade association, various comments concerning the subject of the current AD, and a further analysis of field service data related to the BHTI Model 47 helicopters. The actions specified by this AD are intended to prevent failure of a grip, loss of a main rotor blade, and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before December 28, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2001–SW–17–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov.* Comments may be inspected at the Office of the Regional Counsel between 9 a.m. and 3 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Marc Belhumeur, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Certification Office, Fort Worth, Texas 76193–0170, telephone (817) 222–5177, fax (817) 222–5783.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this proposal must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 2001–SW–17–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2001–SW–17–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

On May 12, 1987, the FAA issued AD 86–06–08R1, Amendment 39–5260 (52 FR 24135, June 29, 1987) that amended AD 86–06–08, Amendment 39–5626 (51 FR 11300, April 2, 1986) for BHTI Model 47 helicopters. Those ADs required certain fluorescent dye penetrant inspections of each grip. On August 31, 2000, the FAA issued Emergency AD 2000–18–51 for BHTI Model 47 helicopters that superseded AD 86–06–08 and the revision of that AD, 86–06–08R1. AD 2000–18–51 required certain liquid penetrant or eddy current inspections of the grip threads for a crack and, before further flight, replacing any cracked grip with an airworthy grip. That AD also established a retirement life of 1200 hours TIS for each grip. To address the same unsafe condition as addressed for the Model 47 series helicopters, the FAA issued Emergency AD 2001–18–52 on September 1, 2000, for Model OH–13E, OH–13H, and OH–13S helicopters manufactured by BHTI.

Those actions were prompted by the results of an investigation of an August 1998 Canadian accident in which a grip failed on a BHTI Model 47G–2 helicopter due to a fatigue crack. An analysis of field service data revealed fatigue cracks in the majority of the grips inspected. The requirements of AD 2000–18–52 are intended to prevent failure of a grip, loss of a main rotor blade, and subsequent loss of control of the helicopter.

Since issuing AD 2000–18–52, other cracked grips with less than 1200 hours TIS have been discovered, including one grip with a 2-inch crack through the grip. Since then, the FAA has determined that the liquid penetrant inspection is inadequate for finding smaller cracks in the grip threads. Additionally, two parts produced under a Parts Manufacturer Approval (PMA), P/Ns R74–120–252–11 and R74–120–135–5, were inadvertently omitted from the applicability of AD 2000–18–52. Based on these findings, an accident

investigation, a further analysis of field service data, and the results of an operator survey conducted by a trade association, the FAA is proposing to supersede AD 2000–18–52. Also, some of these proposals are based on the comments received in response to AD 2000–18–51 and addressed by the FAA in AD 2001–17–17, Amendment 39–12408 (66 FR 45584, August 29, 2001). Those comments pertain to the Model 47 series helicopters as well as the Model OH–13E, OH–13H, and OH–13S helicopters that have the same blade grips installed.

We have identified an unsafe condition that is likely to exist or develop on Model OH–13E, OH–13H, and OH–13S helicopters. The proposed AD would supersede AD 2000–18–52 to require the following:

• For grips, P/N 47–120–135–2, 47–120–135–3, 47–120–135–5, 47–120–252–1, 47–120–252–7, 47–120–252–11, and for grips manufactured under PMA, P/N 74–120–252–11, 74–120–135–5, R74–120–252–11, and R74–120–135–5, conduct eddy current inspections of the threads of both grips as follows:

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

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

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

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

The FAA estimates that 300 helicopters of U.S. registry would be affected by this AD, that it would take approximately 10 work hours per helicopter to accomplish the disassembly, inspection, and reassembly of the grips from the helicopter, and that the average labor rate is $60 per work hour. Required parts, if a grip needs to be replaced, would cost approximately $4,000 per grip. There are two grips on each helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $2,580,000, assuming one inspection per helicopter and replacement of both grips on each helicopter.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–11984 and by adding a new airworthiness directive to read as follows:

Continental Copters, Inc.; Gifton McCreay (Formerly Aerodyne Systems Engineering, Ltd., Formerly Texas Helicopter Corp.); Hawkeye Rotor and Wing Flight School; and Teryjon Aviation Inc.: Docket No. 2001–SW–17–AD. Supersedes AD 2000–18–52, Amendment 39–11984, Docket No. 2000–SW–36–AD.

Applicability: Model OH–13E, OH–13H, and OH–13S helicopters manufactured by Bell Helicopter Textron, Inc. (BHTI), with main rotor blade grips, part number (P/N) 47–120–135–2, 47–120–135–3, 47–120–135–5, 47–120–252–1, 47–120–252–7, 47–120–252–11, 74–120–252–11, 74–120–135–5, R74–120–252–11, or R74–120–135–5, installed, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

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

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

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

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

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

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

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

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

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

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

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

Appendix 1

BILLING CODE 4910–13–U

NONDESTRUCTIVE INSPECTION PROCEDURE

TASK: EDDY CURRENT (ET) INSPECTION OF MAST THREADS FOR CRACKS

1.0 AREA OF INSPECTION

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

2.0 EQUIPMENT

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

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

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

2.4 Light oil.

3.0 PERSONNEL REQUIREMENTS

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

4.0 STANDARDIZATION

4.1 Connect probe to flaw detector and turn power on.

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

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

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

5.0 PRE INSPECTION

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

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

6.0 INSPECTION

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

NONDESTRUCTIVE INSPECTION PROCEDURE (CONT.)

7.0 EVALUATION

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

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

8.0 ACCEPT/REJECT CRITERIA

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

Zetec M12 - 20/22, Phasec 2200 Settings

Dialogue: English	Alarm Stretch: 1S	Probe: Standard
Printer: HP PCL	Alarm Shape: Off	Drive: +10dB 6.3V
◀Bright Bal▶ Low Split	Apply to: Trace 1	Analogue 1:Out Off
Graticule: Rect. A	◀Alarm action▶ Run Silent	Analogue 2: Out Off

Ser'l Conf. Alarm I/0 Time Batt.

Hi-pass: DC	CH1 Freq: 100KHz	◀ Mode: Diff 1Ch
Lo-pass: 20 Hz	CH1 PHASE: 193.0°	Display: XY
Inp. Gain: +20dB	CH1 GAIN: 46.0Db	View: Ch1
Optimize: ◀ + ▶	CH1 X:Y: X -3.0dB	Persist: Permn't

Table 1, Appendix 1

NONDESTRUCTIVE INSPECTION PROCEDURE (CONT.)

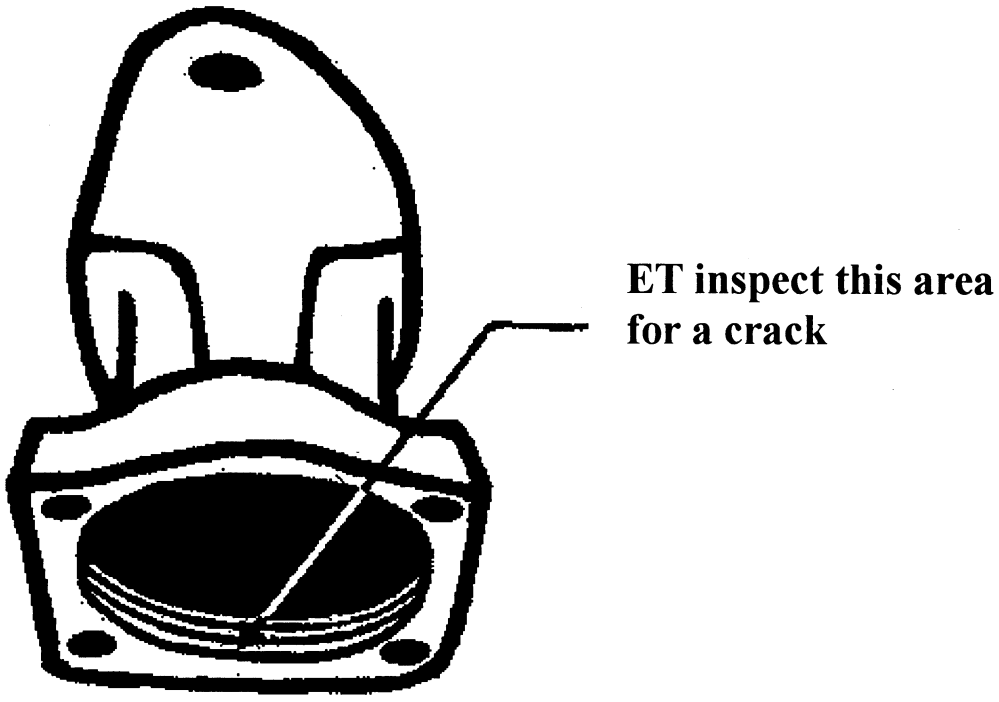
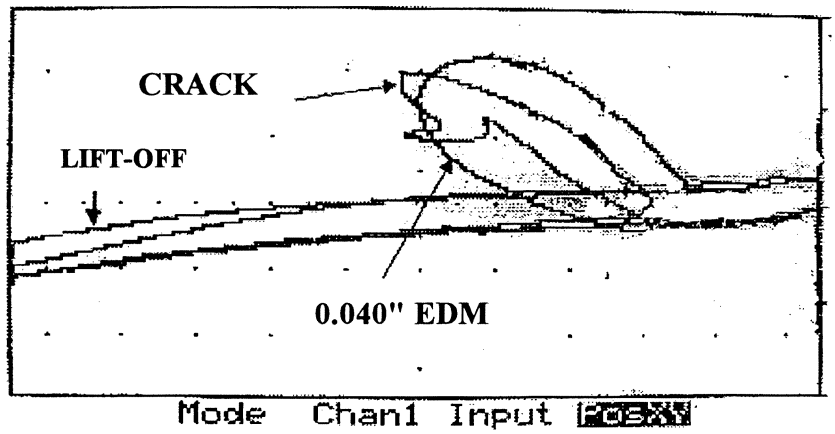


Figure 1, Appendix 1

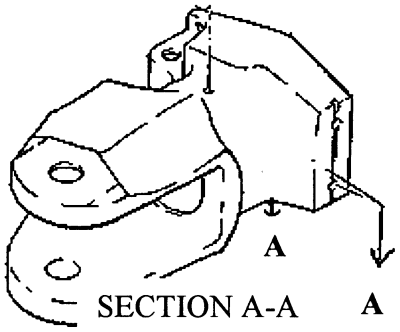
NONDESTRUCTIVE INSPECTION PROCEDURE (CONT.)



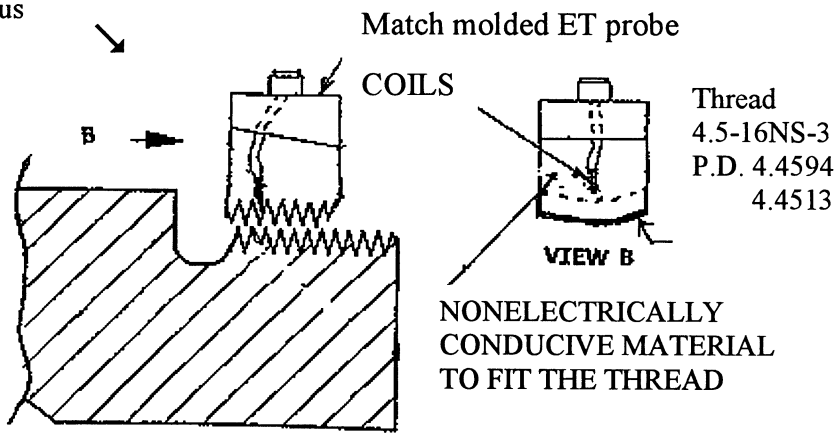
A typical flaw indication appears on the eddy current monitor as shown above.

Figure 2, Appendix 1

NONDESTRUCTIVE INSPECTION PROCEDURE (CONT.)



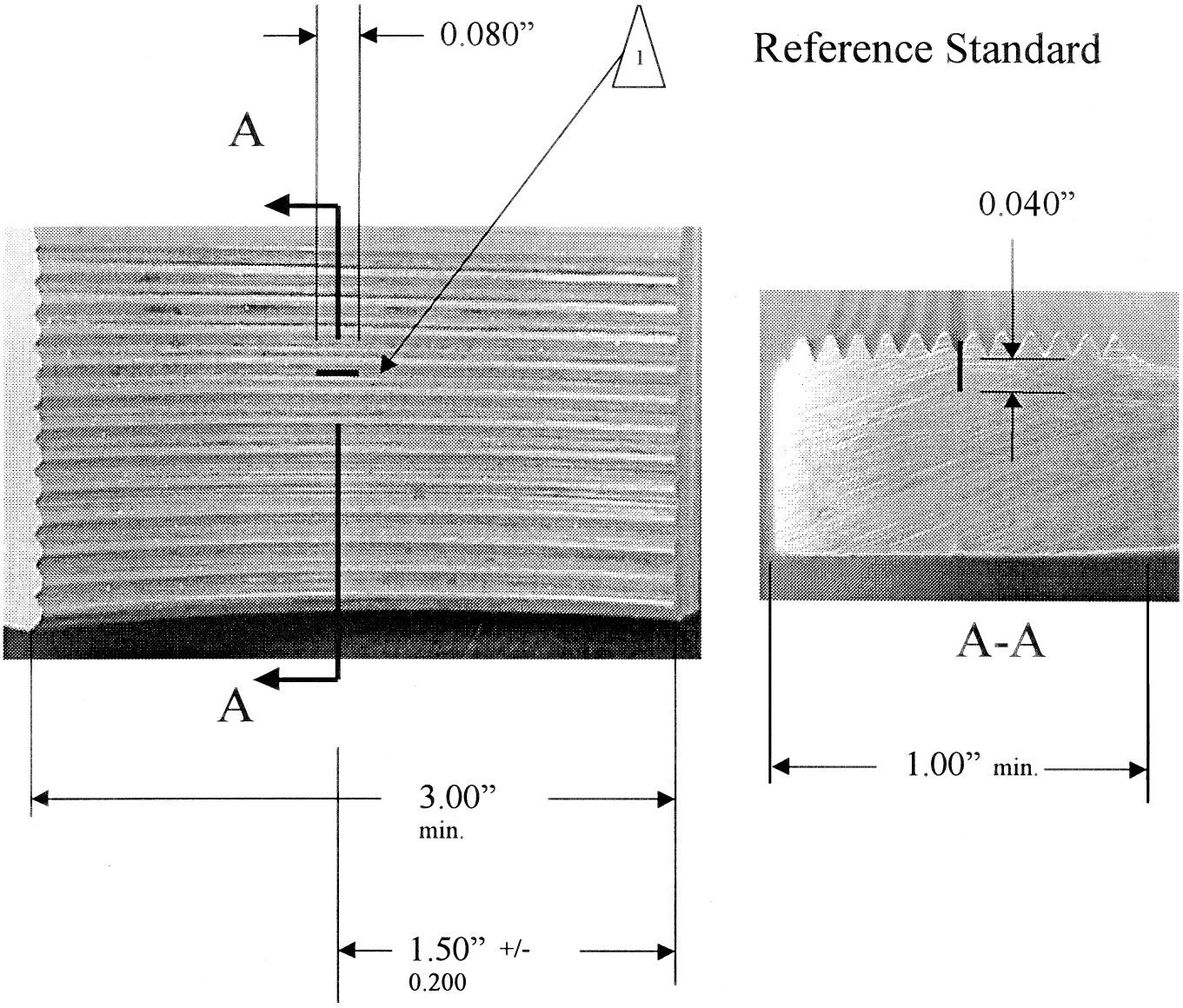
A special eddy current probe shaped to fit the thread and containing a coil positioned so that its ferrite core is contiguous with the root of the thread.



SECTION A-A

Figure 3, Appendix 1

NONDESTRUCTIVE TESTING PROCEDURE (CONT.)



1 EDM 1 place only in thread root.
Notch width shall be 0.004 max.
All other dimensions to be +/- 0.004 from indicated.

Figure 4, Appendix 1

NONDESTRUCTIVE INSPECTION PROCEDURE (CONT.)

Reference Standard

MACHINING NOTES:

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

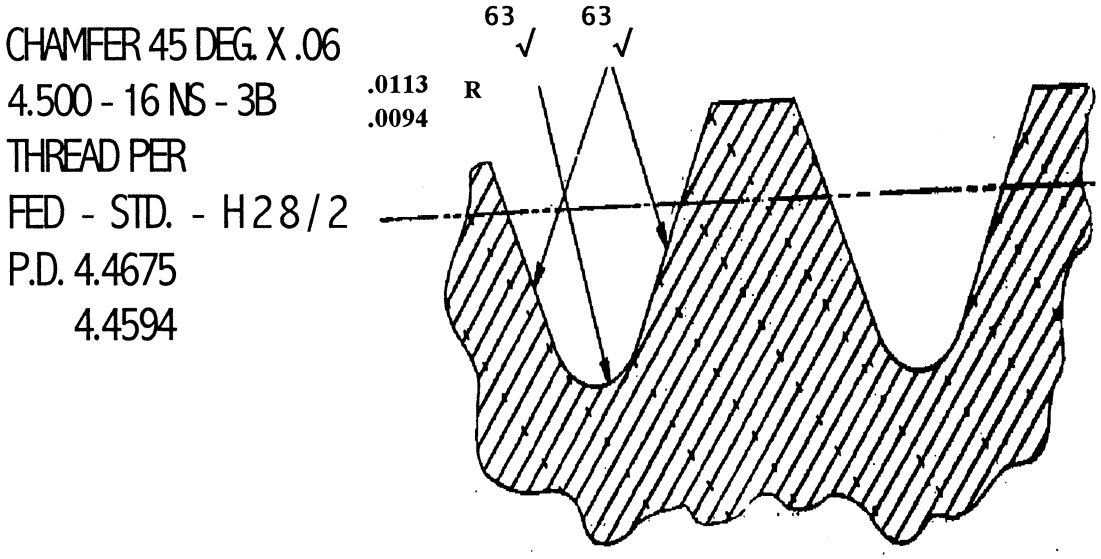


Figure 5, Appendix 1

BILLING CODE 4910–13–C

Appendix 2

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

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

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

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

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

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

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

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

Other FAA Approved repair facilities may be used.

Appendix 3

AD Compliance Inspection Report (Sample Format) Model OH–13 Main Rotor Blade Grip

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

Aircraft Registration No:
Helicopter Model:
Helicopter Serial Number:
Owner and Operator of the Helicopter:

Grip #1 Grip #2

Part Number:
Serial Number:

Hours TIS on the part at Inspection:
Crack Found (Y/N)
If yes, describe below.

Description of Findings

Who performed the inspections?

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

Provide any other comments.

Issued in Fort Worth, Texas, on October 11, 2001.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 01–26966 Filed 10–26–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NE–14–AD]

RIN 2120–AA64

Airworthiness Directives; Honeywell International Inc. LTS101 Series Turboshaft Engines and LTP101 Series Turboprop Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) proposes to adopt a new airworthiness directive (AD) that is applicable to Honeywell International Inc. (formerly AlliedSignal Inc.) LTS101 series turboshaft engines; and LTP101 series turboprop engines. This proposal would require a one-time visual inspection for surface finish and a one-time fluorescent penetrant inspection for cracks of certain impellers installed on LTS101 series turboshaft and LTP101 series turboprop engines. This proposal is prompted by a report of a machining discrepancy that may have occurred during manufacture of the affected impellers. The actions specified by the proposed AD are intended to prevent impeller failure from cracks in the impeller back face area, which could result in an uncontained engine failure.

DATES: Comments must be received by December 28, 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–14–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected, by appointment, at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. 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 the proposed rule may be obtained from Honeywell International Inc. (formerly AlliedSignal) Aerospace Services Attn.: Data Distribution, M/S 64–3/2101–201, PO Box 29003, Phoenix, AZ 85038–9003; telephone (602) 365–2493, fax (602) 365–5577. This information may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Robert Baitoo, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; telephone (562) 627–5245, fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this proposal must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NE–14–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–NE–14–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The FAA has received a report of two impellers that failed while being tested by the manufacturer. It is believed that the failures are a result of a machining discrepancy that may have occurred during manufacture of the affected impellers. This condition, if not corrected, could result in the development of cracks in the impeller

back face area and possibly an uncontained engine failure.

Evaluation of the Unsafe Condition

Since an unsafe condition has been identified that is likely to exist or develop on other LTS101 series turboshaft engines; and LTP101 series turboprop engines of the same type design, the proposed AD would require a one-time visual inspection for surface finish and a one-time fluorescent penetrant inspection for cracks of certain impellers as described in AlliedSignal Service Bulletin (SB) LT 101–72–30–0186, dated October 1, 1999, or Honeywell International SB LT 101–72–30–0186, Revision 1, dated April 25, 2000.

Differences Between the Proposed AD and the Manufacturers' Service Bulletins

To assure that the unsafe condition is addressed in a timely fashion, this amendment will require a one-time visual inspection for surface finish and a one-time fluorescent penetrant inspection for cracks of impellers part numbers (P/N's) 4–101–052–57/–62 within 900 gas generator (Ng) cycles after the effective date of this AD.

Economic Impact

The FAA estimates that 600 engines installed on aircraft of U.S. registry would be affected by this proposed AD and that it would take approximately 4 work hours per engine to accomplish the proposed inspection. The average labor rate is $60 per work hour. There are no required parts costs. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $144,000.

Regulatory Impact

This proposed rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposed rule.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Honeywell International Inc.: Docket No. 2000–NE–14–AD.

Applicability: This airworthiness directive (AD) is applicable to LTS101 series turboshaft and LTP101 series turboprop engines with the following centrifugal compressor impeller part numbers (P/N's) installed: 4–101–052–57 and 4–101–052–62, except those with a P/N or serial number (SN) listed in paragraphs 1.A.(1) through 1.A.(3) of AlliedSignal SB LT 101–72–30–0186, dated October 1, 1999, or Honeywell International Inc. SB LT 101–72–30–0186, Revision 1, dated April 25, 2000. These engines are installed on, but not limited to Aerospatiale AS350, Eurocopter MBB–BK117 and HH–65A, Bell 222, Page Thrush, Air Tractor AT–302, Piaggio P.166–DL3, Riley International R421, and Pacific Aero 08–600 aircraft.

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

Compliance: Required as indicated, unless already done.

To prevent impeller failure from cracks in the impeller back face area, which could result in an uncontained engine failure, do the following:

(a) Within 900 gas generator (Ng) cycles after the effective date of this AD, conduct a one-time visual inspection for surface finish and fluorescent penetrant inspection of impellers P/N 4–101–052–57 and 4–101–052–62 for cracks in accordance with 3.A through 3.F. of the Accomplishment Instructions of AlliedSignal Service Bulletin (SB) LT 101–72–30–0186, dated October 1, 1999, or Honeywell International Inc. SB LT 101–72–30–0186, Revision 1, dated April 25, 2000.

(b) Replace all impellers that exceed the acceptable limits of the Accomplishment Instructions of AlliedSignal Service Bulletin (SB) LT 101–72–30–0186, dated October 1, 1999, or Honeywell International Inc. SB LT 101–72–30–0186, Revision 1, dated April 25, 2000 with a serviceable impeller.

(c) After the effective date of this AD, do not install impeller P/N's 4–101–052–57 or 4–101–052–62, except those with an impeller P/N or SN listed in paragraphs 1. A.(1) through 1. A.(3) of AlliedSignal SB LT 101–72–30–0186, dated October 1, 1999, or Honeywell International Inc. SB LT 101–72–30–0186, Revision 1, dated April 25, 2000.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Issued in Burlington, Massachusetts, on October 18, 2001.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 01–26968 Filed 10–26–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–200–AD]

RIN 2120–AA64

Airworthiness Directives; Israel Aircraft Industries, Ltd., Model 1124 and 1124A, and Model 1125 Westwind Astra Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Israel Aircraft Industries Model 1124 and 1124A series airplanes, and certain Model 1125 Westwind Astra series airplanes. This proposal would require a one-time inspection of the attachment bolts installed on the engine inlet cowl and aft nacelle attachment flanges to verify correct part numbers of the bolts, and replacement of any discrepant/incorrect bolt with a correct attachment bolt. This action is necessary to prevent failure of attachment bolts due to fatigue, which could result in separation of the engine inlet cowl and aft nacelle, and consequent damage to the horizontal or vertical stabilizer. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by November 28, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–200–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–200–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Galaxy Aerospace Corporation, One Galaxy Way, Fort Worth Alliance Airport, Fort Worth, Texas 76177. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NM–200–AD.'' The postcard will be dated stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–200–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Administration of Israel (CAAI), which is the airworthiness authority for Israel, has notified the FAA that an unsafe condition may exist on all Israel Aircraft Industries, Ltd., Model 1124 and 1124A series airplanes, and certain Model 1125 Westwind Astra series airplanes. The CAAI advises that it has received reports of certain incorrect attachment bolts being used to attach the inlet cowl and the aft nacelle to the engine flanges. For that attachment function, those incorrect bolts (having part number AN3) are considered to be fatigue critical bolts. Failure of such attachment bolts due to fatigue, could result in separation of the engine inlet cowl and aft nacelle and consequent damage to the horizontal or vertical stabilizer.

Explanation of Relevant Service Information

Israel Aircraft Industries has issued 1124–Westwind Alert Service Bulletin 1124–54A–138, and Astra Alert Service Bulletin 1125–54A–247, both dated March 29, 2001, which describe procedures for inspection of the attachment bolts installed on the engine inlet cowl and aft nacelle attachment flanges to verify correct part numbers of the bolts, and replacement of any discrepant/incorrect bolt with a correct attachment bolt. Accomplishment of the actions specified in the alert service bulletins is intended to adequately address the identified unsafe condition. The CAAI classified these alert service bulletins as mandatory and issued Israeli airworthiness directive 54–01–05–02, dated May 13, 2001, in order to assure the continued airworthiness of these airplanes in Israel.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or

develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the alert service bulletins described previously.

Cost Impact

The FAA estimates that 299 Model 1124, 1124A, and Model 1125 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $17,940, or $60 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Israel Aircraft Industries, Ltd.: Docket 2001–NM–200–AD.

Applicability: All Model 1124 and 1124A series airplanes, and Model 1125 Westwind Astra series airplanes, having serial numbers 004 through 072 inclusive, and 074 through 078 inclusive; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of attachment bolts due to fatigue, which could result in separation of the engine inlet cowl and aft nacelle, and consequent damage to the horizontal or vertical stabilizer, accomplish the following:

Inspection and Replacement, If Necessary

(a) Within 50 flight hours from the effective date of this AD, perform a one-time inspection of the bolts installed on the engine inlet cowl and aft nacelle attachment flanges to verify correct part numbers of the bolts. Before further flight, replace any discrepant bolts with the correct bolts, per 1124-Westwind (Israeli Aircraft Industries) Alert Service Bulletin 1124–54A–138, and Astra (Israeli Aircraft Industries) Alert Service Bulletin 1125–54A–247, both dated March 29, 2001; as applicable.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Note 3: The subject of this AD is addressed in Israeli airworthiness directive 54–01–05–02, dated May 13, 2001.

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

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–27071 Filed 10–26–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–150–AD]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited Model BAe 146–200A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain BAE Systems (Operations) Limited Model BAe 146–200A series airplanes. This proposal would require replacement of the signal summing units (SSUs) for the stall identification system with new, improved parts. This action is necessary to prevent stall identification and stall warning signals from occurring at the same time, leading the flight crew to take action based on erroneous information, which could result in reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by November 28, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation

Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–150–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2001-NM–150-AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001-NM–150-AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–150–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified the FAA that an unsafe condition may exist on certain BAE Systems (Operations) Limited Model BAe 146–200A series airplanes. The CAA advises that certain signal summing units (SSUs) for the stall identification system have an incorrect speed law calibration in the range of 200 to 230 knots. This condition, if not corrected, could result in stall identification and stall warning signals occurring at the same time, leading the flight crew to take action based on erroneous information, which could result in reduced controllability of the airplane.

Explanation of Relevant Service Information

BAE Systems (Operations) Limited has issued Modification Service Bulletin SB.27–109–00503C, Revision 3, dated March 19, 2001, which describes procedures for replacing SSUs having part number C81606–3 with new SSUs having part number C81606–5. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The CAA classified this service bulletin as mandatory and issued British airworthiness directive 009–06–90 in order to assure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

This airplane model is manufactured in the United Kingdom 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.

Explanation of FAA's Determination

British airworthiness directive 009–06–90 was originally issued in May 1991. To assist in our determination of whether it is necessary to propose a parallel action, the FAA has reviewed the available information relevant to the identified unsafe condition. We also have contacted the single operator known to have affected U.S.-registered airplanes and determined that the identified unsafe condition has been addressed on those airplanes. However, to ensure that all affected airplanes are accounted for, we find that issuance of a proposed AD is warranted. The proposed AD would also ensure that the unsafe condition would be addressed on any subject airplane currently operated by a non-U.S. operator under foreign registry if that airplane is imported and placed on the U.S. Register in the future.

Explanation of Requirements of Proposed Rule

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

Difference Between Proposed AD and Service Bulletin

This proposed AD differs from the service bulletin with regard to compliance time. The service bulletin recommends that the replacement of SSUs be accomplished (based on the original issue of the service bulletin) before May 31, 1991. This proposed AD would require the replacement of SSUs with new SSUs within one year after the effective date of this AD. In developing an appropriate compliance time for this AD, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with

addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the replacement (estimated at one hour). In light of all of these factors, the FAA finds a one-year compliance time for completing the proposed actions to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Cost Impact

The FAA estimates that 12 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed replacement, and that the average labor rate is $60 per work hour. Required parts would cost between $23,747 and $29,688 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be between $285,684 and $356,976, or between $23,807 and $29,748 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft): Docket 2001–NM–150–AD.

Applicability: Model BAe 146–200A series airplanes, as listed in BAE Systems Modification Service Bulletin SB.27–109–00503C, Revision 3, dated March 19, 2001; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent stall identification and stall warning signals from occurring at the same time, leading the flight crew to take action based on erroneous information, which could result in reduced controllability of the airplane, accomplish the following:

Replacement

(a) Within 1 year after the effective date of this AD, replace signal summing units (SSUs), part number C81606–3, for the stall identification system with new SSUs having part number C81606–5, according to BAE Systems Modification Service Bulletin SB.27–109–00503C, Revision 3, dated March 19, 2001.

Note 2: Replacement of SSUs having part number C81606–3 with new SSUs having part number C81606–5 accomplished according to British Aerospace Service Bulletin SB.27–109–00503C, Revision 1, dated November 12, 1990; or Revision 2, dated February 4, 2000; is acceptable for compliance with paragraph (a) of this AD.

Spares

(b) As of the effective date of this AD, no person shall install an SSU, part number C81606–3, on any airplane.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Note 4: The subject of this AD is addressed in British airworthiness directive 009–06–90.

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

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–27072 Filed 10–26–01; 8:45 am]

BILLING CODE 4910–13–U

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Parts 1260 and 1274

NASA Grant and Cooperative Agreement Handbook—Rewrite of Section D—Cooperative Agreements With Commercial Firms and Implementation of Section 319 of Public Law 106–391, Buy American Encouragement

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: This proposed rule amends NASA's Grant and Cooperative Agreement Handbook by revising Section D, Cooperative Agreements with Commercial Firms, to clarify current management policies, incorporate process improvements, conform with recent changes in legislation, and

institute risk management as part of source selection. This proposed rule also implements Section 319, Buy American Encouragement, of Public Law 106–391, NASA Authorization Act of 2000.

DATES: Interested parties should submit comments in writing on or before December 28, 2001 to be considered in formulation of a final rule.

ADDRESSES: Submit written comments to: Eugene Johnson, NASA Headquarters, Office of Procurement, Analysis Division (Code HC), Washington, DC 20546–0001. Submit electronic comments via the Internet to: *ejohnson@hq.nasa.gov.*

FOR FURTHER INFORMATION CONTACT: Eugene Johnson, Procurement Analyst, (202) 358–4703, or e-mail: *ejohnson@hq.nasa.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule is a comprehensive revision to NASA grant and cooperative agreement policies codified at 14 CFR part 1274, Grants and Cooperative Agreements with Commercial Firms. The revision was initiated by NASA as part of the Agency's effort to re-engineer its processes for awarding and administering grants and cooperative agreements. Changes are chiefly aimed at clarifying NASA policies for publication of requirements, evaluating and selecting proposals, and implementation of a process for managing the performance risks associated with certain types of cooperative agreements with commercial firms. Scientific breakthroughs based on NASA or NASA mission related projects have greatly benefited the American society, and the world as a whole. In realizing these successes, NASA's technological pursuits involve research and experimental projects, where risks are simply unavoidable. Some recognition of the risks and liability issues associated with some of these projects is reflected in recent legislation (Section 431 of Pub. L. 105–276), which provides for NASA indemnification of the developers of experimental aerospace vehicles performing under Cooperative Agreements. This proposed rewrite of Section D of the Grant and Cooperative Agreement Handbook implements a process that requires early identification, assessment, and management by NASA and the recipient, of risk and safety issues associated with a given research project.

Additionally, this proposed rule will promulgate the requirements of Section 319, ''Buy American Encouragement,'' of the NASA Authorization Act of 2000 (Pub. L. 106–391) for recipients of non-profit grants and cooperative agreements.

B. Regulatory Flexibility Act

NASA does not expect this proposed rule to have a significant economic impact on a substantial number of small business entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the rule primarily clarifies existing requirements and refocusing attention on risk management.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 14 CFR Parts 1260 and 1274

Grant Programs—Science and Technology.

Tom Luedtke,

Associate Administrator for Procurement.

Accordingly, 14 CFR Ch. V is proposed to be amended as follows:

PART 1260—GRANTS AND COOPERATIVE AGREEMENTS

1. The authority citation for 14 CFR Part 1260 continue to read as follows:

Authority: Part 1260: 42 U.S.C.2374(c)(1), Pub. L. 97–258, 96 Stat. 1003 (31 U.S.C. 6301 *et seq.*), and OMB Circular A–110.

§ 1260.20 [Amended]

2. In § 1260.20, amend paragraphs (a), (d), (e), (f), and (h) by removing ''1260.38'' and adding ''1260.39'' in its place.

3. Add § 1260.39 to read as follows:

§ 1260.39 Buy American encouragement.

Buy American Encouragement (XX/XX)

(a) As stated in Section 319 of Public Law 106–391, the NASA Authorization Act of 2000, Recipients are encouraged to purchase only American-made equipment and products.

(b) The Recipient will observe property standards and provisions set forth in §§ 1260.131 through 1260.137.

[End of Provision]

4. Revise part 1274 to read as follows:

PART 1274—COOPERATIVE AGREEMENTS WITH COMMERCIAL FIRMS

Subpart 1274.1—General

Sec.

Subpart 1274.2—Pre-Award Requirements

Subpart 1274.3—Administration

Subpart 1274.4—Property

Subpart 1274.5—Procurement Standards

Subpart 1274.6—Reports and Records

Subpart 1274.7—Suspension or Termination

Subpart 1274.8—Post-Award/Administrative Requirements

Subpart 1274.9—Other Provisions and Special Conditions

Authority: 31 U.S.C. 6301 to 6308; 42 U.S.C. 2451 et seq.

Subpart 1274.1—General

§ 1274.101 Purpose.

The following policy guidelines establish uniform requirements for NASA cooperative agreements awarded to commercial firms.

§ 1274.102 Scope.

(a) The business relationship between NASA and the recipient of a cooperation agreement differs from the relationship that exists between NASA and the recipient of a grant. Under the auspices of a grant, there is very little involvement and interaction between NASA and the grantee (other than a few administrative, funding, and reporting requirements, or in some cases matching of funds). Under a cooperative agreement, because of its substantial involvement, NASA assumes a higher degree of responsibility for the technical performance outcomes and associated financial costs of research activities. In some cooperative agreement projects, NASA may be required to indemnify the recipient (to the extent authorized by Congress). While the principal purpose of NASA's involvement and commitment of resources is to stimulate or support research activity, a major incentive for involvement by commercial firms (particularly where costs are shared) is the profit potential from marketable products expected to result from the cooperative agreement project.

(b) Cooperative Agreements (in areas or research relevant to NASA's mission) are ordinarily entered into with commercial firms to—

(1) Support research and development;

(2) Provide technology transfer from the Government to the recipient;.

(3) Develop a capability among U.S. firms to potentially enhance U.S. competitiveness; or

(4) Stimulate interest from profit-oriented businesses that may have the best technical resources available, but have little interest or incentive to apply those resources to a particular area of research.

(c) Projects that normally result in a Cooperative Agreement award to a commercial entity are those:

(1) Not intended for the direct benefit of NASA;

(2) Are expected to benefit the general public;

(3) Require substantial cost sharing; and

(4) Have commercial applications and profit generating potential.

§ 1274.103 Definitions.

Administrator. The Administrator or Deputy Administrator of NASA.

Agreement Officer. A Government employee (usually a Contracting Officer or Grant Officer) who has been delegated the authority to negotiate, award, or administer the cooperative agreement. Most often Contracting Officers are delegated this authority for the more complex cooperative agreement projects.

Associate Administrator for Procurement. The head of the Office of Procurement, NASA Headquarters (Code H).

Cash contributions. The cash invested in a given program or project by the Federal Government and/or recipient. The recipient's cash contributions may include money contributed by third parties.

Closeout. The process by which NASA determines that all applicable administrative actions and all required work of the award have been completed by the recipient and NASA.

Commercial item. The definition in FAR 2.101 is applicable.

Cooperative agreement. As defined by 31 U.S.C. 6305, cooperative agreements are financial assistance instruments used to stimulate or support activities for authorized purposes and in which the Government participates substantially in the performance of the effort. This Part 1274 covers only cooperative agreements with commercial firms where resource sharing is involved. Cooperative agreements with other types of organizations are covered by 14 CFR part 1260.

Cost sharing. Agreement whereby the Government and recipient share the funding requirements of a program or project at an agreed upon ratio or percentage (normally 50/50). Normally, the Government's payment of its share of the costs is contingent upon the accomplishment of tangible milestones (preferred method). Any payment arrangement that is based on a method other than the accomplishment of tangible milestones (e.g., a reimbursable arrangement where NASA pays a share of incurred costs, regardless of the accomplishment of tangible milestones) must be approved through the deviation process discussed in § 1274.106.

Date of completion. The date on which all work under an award is completed or the date on the award document, or any supplement or amendment thereto, on which NASA sponsorship ends.

Days. Calendar days, unless otherwise indicated.

General purpose equipment. Equipment which is usable for other than research, medical, scientific, or technical activities, whether or not special modifications are needed to make them suitable for a particular purpose. Examples of general purpose equipment include office equipment and furnishings, air conditioning equipment, reproduction and printing equipment, motor vehicles, and automatic data processing equipment.

Government furnished equipment. Equipment in the possession of, or acquired directly by, the Government and subsequently delivered, or otherwise made available, to a recipient and equipment procured by the

recipient with Government funds under a cooperative agreement.

Incremental funding. A method of funding a cooperative agreement where the funds initially allotted to the cooperative agreement are less than the award amount. Additional funding is added as described in § 1274.918.

Non-cash or In-kind contributions. May be in the form of personnel resources (where cost accounting methods allow accumulation of such costs), real property, equipment, supplies and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the project or program. Costs incurred by NASA to provide the services of one of its support contractors to perform part of NASA's requirements under a cooperative agreement shall be included as part of NASA's cost share, and will be counted as an in-kind contribution to the cooperative agreement.

Recipient. An organization receiving financial assistance under a cooperative agreement to carry out a project or program. A recipient may be an individual firm, including sole proprietor, partnership, corporation, or a consortium of business entities.

Resource contributions. The total value of resources provided by either party to the cooperative agreement including both cash and non-cash contributions.

Subcontracting dollar threshold. The dollar amount of the cooperative agreement subject to the small business subcontracting policies (includes small business, veteran-owned small business, service-disabled veteran-owned small business, historically underutilized small business, small disadvantaged business, women-owned business concerns, Historically Black Colleges and Universities, and minority educational institutions). For cooperative agreements, the dollar threshold to which the small business subcontracting policies apply, is established by the total amount of NASA's cash contributions.

Suspension. An action by NASA or the recipient that temporarily discontinues efforts under an award, pending corrective action or pending a decision to terminate the award.

Technical officer. The official of the cognizant NASA office who is responsible for monitoring the technical aspects of the work under a cooperative agreement. A Contracting Officer's Technical Representative may serve as a Technical Officer.

Termination. The cancellation of a cooperative agreement in whole or in part, by either party at any time prior to the date of completion.

§ 1274.104 Effect on other issuances.

For awards subject to this part, all administrative requirements of codified program regulations, program manuals, handbooks and other non-regulatory materials which are inconsistent with the requirements of this Part shall be superseded, except to the extent they are required by statute, or authorized in accordance with the deviations provision in § 1274.106.

§ 1274.105 Review requirements.

(a) Once the decision is made by a Headquarters program office or Center procurement personnel, to pursue the Cooperative Agreement Notice (CAN) process, for which the total NASA resources to be expended equal or exceed $10 million (cash plus non-cash contributions), a notification shall immediately be provided to the Associate Administrator for Procurement (HS). The notification(s) shall be forwarded by the cognizant Headquarters program office or the Center procurement office (as applicable). For any CAN where NASA's *cash* contributions are expected to equal or exceed $10 million, Headquarters program office or Center procurement personnel shall also notify the Associate Administrator for Small and Disadvantaged Business Utilization (Code K). All such notifications, as described in paragraph (b) of this section, shall evidence concurrence by the cognizant Center Procurement Officer. These review requirements also apply where an unsolicited proposal is received from a commercial firm (or from a team of recipients where one of more team members is a commercial firm), and the planned award document is a cooperative agreement.

(b) The notification shall be accomplished by sending an electronic mail (e-mail) message to the following address at NASA Headquarters: *can@hq.nasa.gov.* The notification must include the following information, as a minimum—

(1) Identification of the cognizant Center and program office;

(2) Description of the proposed program for which proposals are to be solicited;

(3) Rationale for decision to use a CAN rather than other types of solicitations;

(4) The amount of Government funding to be available for awards;

(5) Estimate of the number of cooperative agreements to be awarded as a result of the CAN;

(6) The percentage of cost-sharing to be required;

(7) Tentative schedule for release of CAN and award of cooperative agreements;

(8) If the term of the cooperative agreement is anticipated to exceed 3 years and/or if the Government cash contribution is expected to exceed $20M, address anticipated changes, if any, to the provisions (see § 1274.204(m)); and

(9) If the cooperative agreement is for programs/projects that provide aerospace products or capabilities, (e.g., provision of space and aeronautics, flight and ground systems, technologies and operations), a statement that the requirements of NASA Policy Directive (NPD) 7120.4 and NASA Policy Guidance (NPG) 7120.5 have been met. This affirmative statement will include a specific reference to the signed Program Commitment Agreement.

(c) Code HS will respond by e-mail message to the sender, with a copy of the message to the Procurement Officer and the Office of Small and Disadvantaged Business Utilization, within five (5) working days of receipt of this initial notification. The response will address the following:

(1) Whether Code HS agrees or disagrees with the appropriateness for using a CAN for the effort described,

(2) Whether Code HS will require review and approval of the CAN before its issuance,

(3) Whether Code HS will require review and approval of the selected offeror's cost sharing arrangement (e.g., cost sharing percentage; type of contribution (cash, labor, etc.)).

(4) Whether Code HS will require review and approval of the resulting cooperative agreement(s).

(d) If a response from Code HS is not received within 5 working days of notification, the program office or Center may proceed with release of the CAN and award of the cooperative agreements as described.

§ 1274.106 Deviations.

(a) The Associate Administrator for Procurement may grant exceptions for classes of, or individual cooperative agreements and deviations from the requirements of this Regulation when exceptions are not prohibited by statute.

(b) A deviation is required for any of the following:

(1) When a prescribed provision set forth in this regulation for use verbatim is modified or omitted.

(2) When a provision is set forth in this regulation, but not prescribed for use verbatim, and the installation substitutes a provision which is

inconsistent with the intent, principle, and substance of the prescribed provision.

(3) When a NASA form or other form is prescribed by this regulation, and that form is altered or another form is used in its place.

(4) When limitations, imposed by this regulation upon the use of a provision, form, procedure, or any other action, are not adhered to.

(c) Requests for authority to deviate from this regulation will be forwarded to Headquarters, Program Operations Division (Code HS). Such requests, signed by the Procurement Officer, shall contain as a minimum—

(1) A full description of the deviation and identification of the regulatory requirement from which a deviation is sought;

(2) Detailed rationale for the request, including any perti nent background information;

(3) The name of the recipient and identification of the cooperative agreement affected, including the dollar value.

(4) A statement as to whether the deviation has been re quested previously, and, if so, circumstances of the previous request(s);and

(5) A copy of legal counsel's concurrence or comments.

§ 1274.107 Publication of requirements.

Cooperative agreements may result from recipient proposals submitted in response to the publication of a NASA Research Announcement (NRA), a Cooperative Agreement Notice (CAN), or other Broad Agency Announcement (BAA). BAA's, NRA's and CAN's are normally promulgated through publicly accessible Government-wide announcements such as those published under the Federal Business Opportunities (FedBizOpps), and/or the NASA Acquisition Internet Service (NAIS). Prior to publicizing the CAN, see § 1274.105.

Subpart 1274.2—Pre-Award Requirements

§ 1274.201 Purpose.

This subpart provides pre-award guidance, prescribes forms and instructions, and addresses other pre-award matters.

§ 1274.202 Methods of award.

(a) Competitive Agreements. Consistent with 31 U.S.C. 6301(3), NASA uses competitive procedures to award cooperative agreements whenever possible.

(b) Awards using other than competitive procedures. Solicitations for award of a Cooperative Agreement shall not be issued to, nor negotiations conducted with a single source unless—

(1) Use of such actions is documented in writing in accordance with NFS 1806.303; and

(2) Concurrence and approvals in accordance with the requirements stated in NFS 1806.304–70 are obtained. The dollar thresholds will be determined by the total value of the resources committed to the Cooperative Agreement (cash and quantifiable in-kind contributions).

§ 1274.203 Solicitations/Cooperative Agreement Notices.

(a) The evaluation section of the CAN shall notify potential recipients of the relative importance of factors, and any subfactors or other criteria that will be evaluated during the selection process.

(b) Publication of draft documentation may serve to prevent unnecessary expenditure of resources and unproductive time that may be spent by NASA and potential recipients. Release of draft documentation also serves to assist NASA in refining program objectives and requirements, and maximizes the quality of research proposals submitted for formal evaluation and source selection. Agreement Officers should use every effort to issue draft pre-award cooperative agreement information. Any draft documentation released for comment shall contain all factors/subfactors to be evaluated for award. Draft documents should be as close to the final product as possible. Draft CAN's or Cooperative Agreements (CA) should include terms and conditions, special requirements and expected cash and non-cash (in-kind) contributions.

(c) During the information gathering process, comments may be invited from potential recipients on all aspects of the draft documentation, including the requirements, schedules, proposal instructions and evaluation approaches. Potential recipients should be specifically requested to identify unnecessary or inefficient requirements. Comments should also be requested on any perceived safety, occupational health, security (including information technology security), environmental, export control, and/or other programmatic risk issues associated with performance of the CA.

(1) Agreement Officers should include in the award schedule of the assistance vehicle adequate time for the process to include industry review and comments, and NASA's evaluation and disposition of comments received.

(2) When providing draft documents for comment, the CAN shall advise interested parties that any issued draft documentation shall not be considered as a solicitation for award, and that NASA is not requesting proposals in response to the draft publication.

(3) Whenever feasible, Agreement Officers should include a summary of the disposition of significant comments when issuing the final CAN and/or CA.

(4) For its research projects, NASA may publish the expected project goals and objectives in terms of ''What'' the commercial recipient is expected to accomplish. The commercial recipient *may* be required to submit a proposed statement of work with its proposal stating ''How'' the recipient will accomplish the task(s). Depending on its importance to the success of the project, for some projects the recipient's statement of work may be included as an evaluation criterion for award. In these instances, the requirement for submission of the recipient's statement of work will be clearly identified as a subfactor or criterion that will be evaluated, and its relative weight or ranking in relation to other evaluation criteria shall be stated.

(5) Where performance-based milestone payments are planned, the potential recipient should be encouraged to suggest in its statement of work (which incorporates the project goals and objectives), or elsewhere in its proposal, terms and/or performance events upon which milestone payments can be negotiated. In all cases, where the recipient submits a statement of work in response to NASA project objectives, NASA shall have final approval of the acceptability of the statement of work.

(d) To protect the integrity of the competitive process, upon release of the formal CAN the Agreement Officer shall direct that all personnel associated with the source selection refrain from communicating with prospective recipients and to refer all inquiries to the Agreement Officer or other authorized representative. The notification to potential recipients may be sent in any format (e.g., letter or electronic) appropriate to the complexity of the acquisition. It is not intended that all communication with potential recipients be terminated. Agreement officers should continue to provide information as long as it does not create an unfair competitive advantage or reveal proprietary data.

§ 1274.204 Costs and payments.

(a) *Cooperative agreements are financial assistance vehicles.* Cooperative agreements awarded to commercial firms are subject to the cost accounting standards and principles of

48 CFR chapter 99, as implemented by FAR parts 30 and 31.

(b) *Payment structure.* Cooperative agreements are solicited, awarded and administered in accordance with the method whereby fixed payments are made by NASA based on the accomplishment of predetermined tangible milestones by the recipient. Any arrangement where payments are made on a basis other than accomplished tangible milestones must be approved in accordance the requirements of § 1274.106 ''Deviations''.

(c) *Cost and payment matters*—(1) For cooperative agreements where commercial firms are the recipients, the accounting principles and the business relationship with the Government sponsor (*e.g.,* allowability of costs incurred), shall be governed by the cost accounting standards of 48 CFR Chapter 99, and implemented by FAR parts 30 and 31. If the recipient is a consortium which includes non-commercial entities as members, cost allowability for those members will be determined as follows:

(i) Allowability of costs incurred by state, local or federally-recognized Indian tribal governments is determined in accordance with the provisions of OMB Circular A–87, ''Cost Principles for State and Local Governments.''

(ii) The allowability of costs incurred by non-profit organizations is determined in accordance with the provisions of OMB Circular A–122, ''Cost Principles for Non-Profit Organizations.''

(iii) The allowability of costs incurred by institutions of higher education is determined in accordance with the provisions of OMB Circular A–21, ''Cost Principles for Educational Institutions.''

(iv) The allowability of costs incurred by hospitals is determined in accordance with the provisions of Appendix E of 45 CFR part 74, ''Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals.''

(2) Recipient's method for accounting for the expenditure of funds must be consistent with Generally Accepted Accounting Principles.

(d) *Cost sharing*—(1) Given the mutually beneficial nature, in particular, potential commercially marketable products, expected to result from the research activities of the cooperative agreement, resource contributions are required from the recipient. The commercial recipient is expected to contribute at least 50 percent of the total resources necessary to accomplish the cooperative agreement effort. Recipient contributions may be cash, non-cash (in-kind) or both. Acceptable non-cash or in-kind resources include such items as equipment, facilities, labor, office space, etc. In determining the incentive to the Recipient to share costs, agreement officers must consider a variety of factors. For example, while the future profitability of intellectual property may serve as incentive for involvement of the commercial firm in the cooperative agreement, the actual or imputed value of intellectual property, that includes such items as patent rights, data rights, trade secrets, etc., are generally not considered reliable sources for computation of the recipient's contributions. In most cases these costs are not readily quantifiable. Thus, the value of intellectual property rights should be factored into the incentive for the recipient to share at least 50 percent of costs, but intellectual property rights do not serve as quantifiable amounts to determine the equitable dollar amounts of costs to be shared.

(2) As will be expected from the commercial partner, the Government's cost share should reflect certain non-cash as well as cash contributions to the most practicable extent possible. Where quantifiable, NASA will include in the calculation of the Government's cost share, non-cash or in-kind contributions, which includes the value of equipment, personnel, and facilities (this approach is also supported by the initiative to implement full cost accounting methods within the Federal Government).

(3) When other Government agencies act as partners along with NASA (e.g., Department of Defense or Federal Aviation Administration), the resources contributed by any Government agency shall be counted as part of the Governments' total cost share under the cooperative agreement.

(4) In cases where a contribution of less than 50 percent is anticipated from the commercial recipient, approval of the Associate Administrator for Procurement (Code HS) is required prior to award. The request for approval should address the evaluation factor in the solicitation and how the proposal accomplishes those objectives to such a degree that a share ratio of less than 50 percent is warranted.

(5) For every cooperative agreement, there should be evidence of the recipient's strong commitment and self-interest in the success of the research project. A very strong indicator of a recipient's self-interest is its willingness to commit to a meaningful level of cost sharing. Before considering whether it is impracticable for the recipient to share 50 percent of the performance costs, agreement officers should also consider whether other factors exist that demonstrate the recipient's financial stake or self-interest in the success of the cooperative agreement.

(6) Acceptable cash and in-kind contributions, including IR&D costs, may not be included as contributions for any other federally assisted project or program.

(e) *Fixed Funding*—(1) Cooperative agreements are funded by NASA in a fixed amount. NASA makes disbursement of funds to the recipient as ''Milestone Payments'' discussed in paragraph (f) of this section. If the recipient achieves the final milestone, final payment is made, which completes NASA's financial responsibilities under the agreement.

(2) If the cooperative agreement is terminated prior to achievement of all milestones, NASA's funding is limited to milestone payments already made plus NASA's share of costs incurred to meet commitments of the recipient, which had in the judgment of NASA become firm prior to the effective date of termination. In no event, however, shall the amount of NASA's share of these additional costs exceed the amount of the next scheduled milestone payment.

(f) *Milestone obligations and payments.* A liability is created when costs are incurred, which may be earlier than the payment due date. There must always be sufficient funds obligated to cover the next milestone payment. In addition, funds must be made available (but not necessarily obligated) to cover all milestone payments expected to be made during the current fiscal year of performance.

(1) Agreement officers, technical officers, and other responsible Center personnel shall ensure that funds for milestone payments are obligated, billed and expended in accordance with the guidance set forth by the NASA Financial Management Manual (FMM 9000).

(2) Disbursement of funds to the recipient is based on the achievement of milestones or performance-related benchmarks. The milestone must represent the accomplishment of verifiable, significant event(s) and may not be based upon the mere passage of time or the performance of a particular level effort.

(3) The amount of funds to be disbursed by NASA in recognition of the achievement of milestones (''milestone payments'') shall be established consistent with the ratio of resource sharing agreed upon under the cooperative agreement (see paragraph (e)(2) of this section). While the

schedule for milestone achievement must reflect the project being undertaken, the frequency should not be greater than one payment per month. For many projects, scheduling milestones to be accomplished about every 60 to 90 days appears to be most workable. Partial or interim milestone payments may not be made.

(i) The final milestone payment should be structured so that the associated payment is large enough to provide incentive to the recipient to complete its responsibilities under the cooperative agreement. Alternatively, funds may be reserved for disbursement after completion of the effort.

(ii) The Government technical officer must verify to and advise the agreement officer that each milestone has been achieved prior to authorizing the corresponding payment.

(g) Incremental funding. Whenever the period of performance for the cooperative agreement crosses fiscal years, the agreement shall be incrementally funded using appropriations from different fiscal years. In other circumstances, incremental funding may be appropriate. The total amount of funds obligated during the course of a fiscal year must be sufficient to cover the Government's share of the costs anticipated to be incurred by the recipient during that fiscal year. NASA may allot funds to an agreement at various times during a fiscal year in anticipation of the occurrence of costs. However, there must always be sufficient funds obligated to cover all milestone payments expected to be made during the current fiscal year.

(h) Profit applicability. Recipients shall not be paid a profit under cooperative agreements. Profit may be paid by the recipient to subcontractors, if the subcontractor is not part of the offering team and the subcontract is an arms-length relationship.

(i) Independent Research and Development (IR&D) Costs. When determining the applicable dollar amounts or reasonableness of proposed IR&D costs to be included as part of the recipient's cost share, agreement officers should seek assistance from DCAA or the cognizant audit agency.

(1) In accordance with FAR 31.205–18(e), IR&D costs may include costs contributed by contractors in performing cooperative research and development agreements or similar arrangements, entered into under sections 203(c)(5) and (6) of the National Aeronautics and Space Act of 1958, as amended (42.U.S.C. 2473(c)(5) and (6). IR&D costs incurred by a contractor pursuant to these types of cooperative agreements should be considered as allowable IR&D costs if the work performed would have been allowed as contractor IR&D had there been no cooperative arrangement.

(2) IR&D costs (or an agreed upon portion of IR&D costs) incurred by the recipient's organization and deemed by NASA as the same type of research being undertaken by the cooperative agreement between NASA and the recipient may serve as part of the recipient's contribution of shared costs under the cooperative agreement to the extent that such costs have not been reimbursed through other Federally funded contracts or financial assistance vehicles. When considering the use of IR&D costs as part of the recipient's cost share, the IR&D costs offered by the recipient shall meet the requirements of 31.205–18. Any IR&D costs incurred in a prior period, and offered as part of the recipient's cost share shall meet the criteria established by FAR 31.205–18(d), ''Deferred IR&D Costs''.

(j) Contributions. The CAN should provide a description and value for any quantifiable non-cash or in-kind Government resources (personnel, equipment, facilities, etc.), in addition to any cash funds that will be offered by the Government as part of its contributions to the cooperative agreement. As part of its proposal package, the recipient may also identify additional non-cash or in-kind resources it wishes NASA to contribute. The recipient shall verify the suitability of the requested resource to the work to be performed under the cooperative agreement. Any additional verifiable and suitable non-cash or in-kind resources requested, shall be added to NASA's shared cost of performing the cooperative agreement, and may require increased cash or in-kind contributions from the recipient to meet its percentage of the cost share.

§ 1274.205 Consortia as recipients.

(a) The use of consortia as recipients for cooperative agreements is encouraged. Such arrangements tend to bring a broader range of capabilities and resources to the cooperative agreement. In addition, consortium members can better share the projects financial costs (e.g., the 50 percent recipient's cost share or other costs of performance). A consortium is a group of organizations that enter into an agreement to collaborate for the purposes of the cooperative agreement with NASA. The agreement to collaborate can take the form of a legal entity such as a partnership or joint venture but it is not necessary that such an entity be created. A consortium may be made up of firms that normally compete for commercial or Government business or may be made up of firms that perform complementary functions in a given industry. NASA enters into an agreement with only one entity (as identified by the consortium members). (Also see § 1274.940). The inclusion of non-profit or educational institutions, small businesses, or small disadvantaged businesses in the consortium could be particularly valuable in ensuring that the results of the consortium's activities are disseminated.

(b) Key to the success of the cooperative agreement with a consortium is the consortium's Articles of Collaboration, which is a definitive description of the roles and responsibilities of the consortium's members. The Articles of Collaboration must designate a lead firm to represent the consortium and authority to sign on the consortium's behalf. It should also address to the extent appropriate—

(1) Commitments of financial, personnel, facilities and other resources;

(2) A detailed milestone chart of consortium activities;

(3) Accounting requirements;

(4) Subcontracting procedures;

(5) Disputes;

(6) Term of the agreement;

(7) Insurance and liability issues;

(8) Internal and external reporting requirements;

(9) Management structure of the consortium;

(10) Obligations of organizations withdrawing from the consortia;

(11) Allocation of data and patent rights among the consortia members

(12) Agreements, if any, to share existing technology and data;

(13) The firm which is responsible for the completion of the consortium's responsibilities under the cooperative agreement and has the authority to commit the consortium and receive payments from NASA, and address employee policy or other personnel issues.

(c) The consortium's charter or by-laws may be substituted for the Articles of Collaboration only if they are inclusive of all of the required information.

(d) An outline of the Articles of Collaboration should be required as part of the proposal and evaluated during the source selection process. Articles of Collaboration do not become part of the resulting cooperative agreement.

§ 1274.206 Metric Conversion Act.

The Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act (15 U.S.C. 205) declares that the metric system is the

preferred measurement system for U.S. trade and commerce. NASA's policy with respect to the metric measurement system is stated in NPD 8010.2, Use of the Metric System of Measurement in NASA Programs.

§ 1274.207 Extended agreements.

The provisions set forth in § 1274.901 are generally considered appropriate for agreements not exceeding 3 years and/or a Government cash contribution not exceeding $20M. For cooperative agreements expected to be longer than 3 years and/or involve Government cash contributions exceeding $20M, consideration should be given to provisions, which place additional restrictions on the recipient in terms of validating performance and accounting for funds expended.

§ 1274.208 Intellectual property.

(a) *Intellectual Property Rights.* A cooperative agreement covers the disposition of rights to intellectual property between NASA and the recipient. If the recipient is a consortium or partnership, rights flowing between multiple organizations in a consortium must be negotiated separately and formally documented, preferably in the Articles of Collaboration.

(b) *Rights in Patents.* Patent rights clauses are required by statute and regulation. The clauses exist for recipients of the agreement whether they are—

(1) Other than small business or nonprofit organizations (generally referred to as large businesses) or

(2) Small businesses or nonprofit organizations.

(c) *Inventions.* There are five situations in which inventions may arise under a cooperative agreement—

(1) Recipient Inventions;

(2) Subcontractor Inventions;

(3) NASA Inventions;

(4) NASA Support Contractor Inventions; and

(5) Joint Inventions with Recipient.

(d) *Recipient inventions.*—(1) A recipient, if a large business, is subject to section 305 of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2457) relating to property rights in inventions. The term ''invention'' includes any invention, discovery, improvement, or innovation. Title to an invention made under a cooperative agreement by a large business recipient initially vests with NASA. The recipient may request a waiver under the NASA Patent Waiver Regulations to obtain title to inventions made under the agreement. Such a request may be made in advance of the agreement (or 30 days thereafter) for all inventions made under the agreement. Alternatively, requests may be made on a case-by-case basis any time an individual invention is made. Such waivers are liberally and expeditiously granted after review by NASA's Invention and Contribution Board and approval by NASA's General Counsel. When a waiver is granted, any inventions made in the performance of work under the agreement are subject to certain reporting, election and filing requirements, a royalty-free license to the Government, march-in rights, and certain other reservations.

(2) A recipient, if a small business or nonprofit organization, may elect to retain title to its inventions. The term ''nonprofit organization'' is defined in 35 U.S.C. 201(i) and includes universities and other institutions of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code. The Government obtains an irrevocable, nonexclusive, royalty-free license.

(e) *Subcontractor inventions.*—(1) *Large business.* If a recipient enters into a subcontract (or similar arrangement) with a large business organization for experimental, developmental, research, design or engineering work in support of the agreement to be performed in the United States, its possessions, or Puerto Rico, section 305 of the Space Act applies. The clause applicable to large business organizations is to be used (suitably modified to identify the parties) in any subcontract. The subcontractor may request a waiver under the NASA Patent Waiver Regulations to obtain rights to inventions made under the subcontract just as a large business recipient can (see paragraph (d)(1) of this section). It is strongly recommended that a prospective large business subcontractor contact the NASA installation Patent Counsel or Intellectual Property Counsel to assure that the right procedures are followed. Just like the recipient, any inventions made in the performance of work under the agreement are subject to certain reporting, election and filing requirements, a royalty-free license to the Government, march-in rights, and certain other reservations.

(2) *Non-profit organization or small business.* In the event the recipient enters into a subcontract (or similar arrangement) with a domestic nonprofit organization or a small business firm for experimental, developmental, or research work to be performed under the agreement, the requirements of 35 U.S.C. 200 *et seq.* regarding ''Patent Rights in Inventions Made With Federal Assistance,'' apply. The subcontractor has the first option to elect title to any inventions made in the performance of work under the agreement, subject to specific reporting, election and filing requirements, a royalty-free license to the Government, march-in rights, and certain other reservations that are specifically set forth.

(3) Work outside the United States. If the recipient subcontracts for work to be done outside the United States, its possessions or Puerto Rico, the NASA installation Patent Counsel or Intellectual Property Counsel should be contacted for the proper patent rights clause to use and the procedures to follow.

(4) Notwithstanding paragraphs (e)(1), (2), and (3) of this section, and in recognition of the recipient's substantial contribution, the recipient is authorized, subject to rights of NASA set forth elsewhere in the agreement, to:

(i) Acquire by negotiation and mutual agreement rights to a subcontractor's subject inventions as the recipient may deem necessary; or

(ii) If unable to reach agreement pursuant to paragraph (e)(4)(i) of this section, request that NASA invoke exceptional circumstances as necessary pursuant to 37 CFR 401.3(a)(2) if the prospective subcontractor is a small business firm or nonprofit organization, or for all other organizations, request that such rights for the recipient be included as an additional reservation in a waiver granted pursuant to 14 CFR 1245.1. The exercise of this exception does not change the flow down of the applicable patent rights clause to subcontractors. Applicable laws and regulations require that title to inventions made under a subcontract must initially reside in either the subcontractor or NASA, not the recipient. This exception does not change that. The exception does authorize the recipient to negotiate and reach mutual agreement with the subcontractor for the grant-back of rights. Such grant-back could be an option for an exclusive license or an assignment, depending on the circumstances.

(f) *NASA inventions.* NASA will use reasonable efforts to report inventions made by its employees as a consequence of, or which bear a direct relation to, the performance of specified NASA activities under an agreement. Upon timely request, NASA will use its best efforts to a grant recipient first option to acquire either an exclusive or partially-exclusive, revocable, royalty-bearing license, on terms to be negotiated, for any patent applications and patents covering such inventions. This exclusive or partially-exclusive license to the recipient will be subject to the

retention of rights by or on behalf of the Government for Government purposes.

(g) *NASA support contractor inventions.* It is preferred that NASA support contractors be excluded from performing any of NASA's responsibilities under an agreement since the rights obtained by a NASA support contractor could work against the rights needed by the recipient. In the event NASA support contractors are tasked by NASA to work under the agreement and inventions are made by support contractor employees, the support contractor will normally retain title to its employee inventions in accordance with 35 U.S.C. 202, 14 CFR part 1245, and E.O. 12591. In the event the recipient decides not to pursue right to title in any such invention and NASA obtains title to such inventions, upon timely request, NASA will use its best efforts to grant the recipient first option to acquire either an exclusive or partially exclusive, revocable, royalty-bearing license, upon terms to be negotiated, for any patent applications and patents covering such inventions. This exclusive or partially-exclusive license to the recipient will be subject to the retention of rights by or on behalf of the Government for Government purposes.

(h) *Joint inventions*—(1) NASA and the recipient agree to use reasonable efforts to identify and report to each other any inventions made jointly between NASA employees (or employees of NASA support contractors) and employees of Recipient. For large businesses, the Associate General Counsel (Intellectual Property) may agree that the United States will refrain, for a specified period, from exercising its undivided interest in a manner inconsistent with the recipient's commercial interest. For small business firms and nonprofit organizations, the Associate General Counsel (Intellectual Property) may agree to assign or transfer whatever rights NASA may acquire in a subject invention from its employee to the recipient as authorized by 35 U.S.C. 202(e). The agreement officer negotiating the agreement with small business firms and nonprofit organizations can agree, up front, that NASA will assign whatever rights it may acquire in a subject invention from its employee to the small business firm or nonprofit organization. Requests under this paragraph shall be made through the Center Patent Counsel.

(2) NASA support contractors may be joint inventors. If a NASA support contractor employee is a joint inventor with a NASA employee, the same provisions apply as those for NASA support contractor inventions (see paragraph (g) of this section). The NASA support contractor will retain or obtain nonexclusive licenses to those inventions in which NASA obtains title. If a NASA support contractor employee is a joint inventor with a recipient employee, the NASA support contractor and recipient will become joint owners of those inventions in which they have elected to retain title or requested and have been granted waiver of title. Where the NASA support contractor has not elected to retain title or has not been granted waiver of title, NASA will jointly own the invention with the Recipient.

(i) *Licenses to recipient(s)*—(1) Any exclusive or partially exclusive commercial licenses are to be royalty-bearing consistent with Government-wide policy in licensing its inventions. It also provides an opportunity for royalty-sharing with the employee-inventor, consistent with Government-wide policy under the Federal Technology Transfer Act.

(2) Upon application in compliance with 37 CFR part 404—Licensing of Government Owned Inventions, all recipients shall be granted a revocable, nonexclusive, royalty-free license in each patent application filed in any country on a subject invention and any resulting patent in which the Government obtains title. Because cooperative agreements are cost sharing cooperative arrangements with a purpose of benefiting the public by improving the competitiveness of the recipient and the Government receives an irrevocable, nonexclusive, royalty-free license in each recipient subject invention, it is only equitable that the recipient receive, at a minimum, a revocable, nonexclusive, royalty-free license in NASA inventions and NASA contractor inventions where NASA has acquired title.

(3) Once a recipient has exercised its option to apply for an exclusive or partially exclusive license, a notice, identifying the invention and the recipient, is published in the **Federal Register**, providing the public opportunity for filing written objections for 60 days.

(j) *Preference for United States manufacture.* Despite any other provision, the recipient agrees that any products embodying subject inventions or produced through the use of subject inventions shall be manufactured substantially in the United States. ''Manufactured substantially in the United States'' means the product must have over 50 percent of its components manufactured in the United States. This requirement is met if the cost to the recipient of the components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all components required to make the product. In making this determination, only the product and its components shall be considered. The cost of each component includes transportation costs to the place of incorporation into the product and any applicable duty whether or not a duty-free entry certificate is issued. Components of foreign origin of the same class or kind for which determinations have been made in accordance with FAR 25.101(a) are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic. The intent of this provision is to support manufacturing jobs in the United States regardless of the status of the recipient as a domestic or foreign controlled company. However, in individual cases, the requirement to manufacture substantially in the United States, may be waived by the Associate Administrator for Procurement (Code HS) upon a showing by the recipient that under the circumstances domestic manufacture is not commercially feasible.

(k) *Space Act Agreements.* Invention and patent rights in cooperative agreements must comply with statutory and regulatory provisions. Where circumstances permit, a Space Act Agreement is available as an alternative instrument which can be more flexible in the area of invention and patent rights.

(l) *Data Rights.* Data rights provisions can and should be tailored to best achieve the needs and objectives of the respective parties concerned.

(1) The data rights clause at § 1274.905 assumes a substantially equal cost sharing relationship where collaborative research, experimental, developmental, engineering, demonstration, or design activities are to be carried out, such that it is likely that ''proprietary'' information will be developed and/or exchanged under the agreement. If cost sharing is unequal or no extensive research, experimental, developmental, engineering, demonstration, or design activities are likely, a different set of clauses may be appropriate.

(2) The primary question that must be answered when developing data clauses is what does each party need or intend to do with the data developed under the agreement. Accordingly, the data rights clauses may be tailored to fit the circumstances. Where conflicting goals of the parties result in incompatible data provisions, agreement officers for the

Government must recognize that private companies entering into cooperative agreements bring resources to that relationship and must be allowed to reap an appropriate benefit for the expenditure of those resources. However, since serving a public purpose is a major objective of a cooperative agreement, care must be exercised to ensure the recipient is not established as a long term sole source supplier of an item or service and is not in a position to take unfair advantage of the results of the cooperative agreement. Therefore, a reasonable time period (i.e., depending on the technology, two to five years after production of the data) may be established after which the data first produced by the recipient in the performance of the agreement will be made public.

(3) Data can be generated from different sources and can have various restrictions placed on its dissemination. Recipient data furnished to NASA can exist prior to, or be produced outside of, the agreement or be produced under the agreement. NASA can also produce data in carrying out its responsibilities under the agreement. Each of these areas must be covered.

(4) For data, including software, first produced by the recipient under the agreement, the recipient may assert copyright. Data exchanged with a notice showing that the data is protected by copyright must include appropriate licenses in order for NASA to use the data as needed.

(5) Recognizing that the dissemination of the results of NASA's activities is a primary objective of a cooperative agreement, the parties should specifically delineate what results will be published and under what conditions. This should be set forth in the clause of the cooperative agreement entitled ''Publication and Reports: Non-Proprietary Research Results.'' Any such agreement on the publication of results should be stated to take precedence over any other clause in the cooperative agreement.

(6) Section 1274.905(b)(3) requires the recipient to provide NASA a government purpose license for data first produced by the Recipient that constitutes trade secrets or confidential business or financial information. NASA and the recipient shall determine the scope of this license at the time of award of the cooperative agreement. In addition to the purposes given as examples in § 1274.905(b)(3), the license should provide NASA the right to use this data under a separate cooperative agreement or contract issued to a party other than the Recipient for the purpose of continuing the project in the event the cooperative agreement is terminated by either party.

(7) In accordance with section 303(b) of the Space Act, any data first produced by NASA under the agreement which embodies trade secrets or financial information that would be privileged or confidential if it had been obtained from a private participant, will be marked with an appropriate legend and maintained in confidence for an agreed to period of up to five years (the maximum allowed by law). This does not apply to data other than that for which there has been agreement regarding publication or distribution. The period of time during which data first produced by NASA is maintained in confidence should be consistent with the period of time determined in accordance with paragraph (h)(2) of this section, before which data first produced by the recipient will be made public. Also, NASA itself may use the marked data (under suitable protective conditions) for agreed-to purposes.

§ 1274.209 Evaluation and selection.

(a) *Factor development.* The agreement officer, along with the NASA evaluation team has discretion to determine the relevant evaluation criteria based upon the project requirements, and the goals and objectives of the cooperative agreement.

(b) *Communications during non-competitive awards.* For cooperative agreements awarded non-competitively (see § 1274.202(b)), there are no restrictions on communications between NASA and the recipient. In addition, there is no requirement for the development and publication of formal evaluation or source selection criteria.

(c) *Communication during competitive awards.* As discussed in § 1274.203(c), when a competitive source selection process will be followed to select the recipient, an appropriate level of care shall be taken by NASA personnel in order to protect the integrity of the source selection process. Therefore, upon release of the formal CAN, the agreement officer shall direct all procurement personnel associated with the source selection to refrain from communicating with perspective recipients and that all inquiries be referred to the agreement officer, or other authorized representative.

(d) *Selection factors and subfactors.*—(1) At a minimum, the selection process for the competitive award of cooperative agreements to commercial entities shall include evaluation of potential recipients' proposals for merit and relevance to NASA's mission requirements through their responses to the publication of NASA evaluation factors. The evaluation factors may include technical and management capabilities (mission suitability), past performance, and proposed costs (including proposed cost share).

(2) For programs that may involve potentially hazardous operations related to flight, and/or mission critical ground systems), NASA's selection factors and subfactors shall include evaluation of the recipient's proposed approach to managing risk (e.g., technology being applied or developed, technical complexity, performance specifications and tolerances, delivery schedule, etc.).

(3) As part of the evaluation process, the factors, subfactors, or other criteria should be tailored to properly address the requirements of the cooperative agreement.

(e) *Other factors and subfactors.* Other factors and subfactors may include:

(1) The composition or appropriateness of the business relationship of proposed team members or consortium, articles of collaboration, participation of an appropriate mix of small business, veteran-owned small business, service-disabled veteran-owned small business, historically underutilized small business, small disadvantaged business, and women-owned business concerns, as well as non-profits and educational institutions, including historically black colleges and universities and minority institutions).

(2) Other considerations may include enhancing U.S. competitiveness, developing a capability among U.S. firms, identification of potential markets, appropriateness of business risks.

(f) *Evaluation*—(1) The proposals shall be evaluated in accordance with the criteria published in the CAN. Proposals selected for award will be supported by documentation as described in § 1274.211(b). When evaluation results in a proposal not being selected, the proposer will be notified in accordance with the CAN.

(2) The technical evaluation of proposals may include peer reviews. Because the business sense of a cooperative agreement proposal is critical to its success, NASA may reserve the right to utilize appropriate outside evaluators to assist in the evaluation of such proposal elements as the business base projections, the market for proposed products, and/or the impact of anticipated product price reductions.

(g) *Cost evaluation*—(1) Prior to award of a cooperative agreement, agreement officers shall ensure that proposed costs are accurate and reasonable. In order to do so, cost and pricing data may be

required. The level of cost and pricing data to be requested shall be commensurate with the analysis necessary to reach agreement on overall proposed project costs. The evaluation of costs shall lead to the determination and verification of total project costs to be shared by NASA and the recipient, as well as establishment of NASA's milestone payment schedule based on its 50 percent cost share. The guidance at FAR 15.4 and NFS 1815.4 can assist in determining whether cost and pricing data are necessary and the level of analysis required. While competition may be present (i.e., more than one proposal is received), in most cases companies are proposing competing technologies and varying approaches that reflect very different methods (and accompanying costs) to satisfy NASA's project objectives. Consequently, this type of competitive environment is very different from an environment where competitive proposals are submitted in response to a request for proposals leading to award of a contract for relatively well-defined program or project requirements.

(2) During evaluation of the cost proposal, the agreement officer, along with other NASA evaluation team members and/or pricing support personnel, shall determine the reasonableness of the overall proposed project costs, including verifying the value of the recipient's proposed non-cash and in-kind contributions. Commitments should be obtained and verified to the extent practicable from the recipient or any associated team members, from which proposed contributions will be made.

(3) If the recipient's proposed contributions include application of IR&D costs, see § 1274.204(i).

(h) *Award to Foreign firms.* An award may not be made to a foreign government. However, if selected as the best available source, an award may be made to a foreign firm. If a proposal is selected from a foreign firm sponsored by their respective government agency, or from entities considered quasi-governmental, approval must be obtained from Headquarters, Program Operations Division (Code HS). Such requests must include detailed rationale for the selection, to include the funding source of the foreign participant. The approval of the Associate Administrator for Procurement is required to exclude foreign firms from submitting proposals. Award to a foreign firm shall be on a no-exchange-of-funds basis (see NPD 1360.2).

(i) The Office of External Affairs (Code I), shall be notified prior to any announcement of intent to award to a foreign firm. Additionally, pursuant to section 126 of Pub.L. 106–391, as part of the evaluation of costs and benefits of entering into an obligation to conduct a space mission in which a foreign entity will participate as a supplier of the spacecraft, spacecraft system, or launch system, NASA shall solicit comment on the potential impact of such participation, through notice published in the FedBizOpps or NAIS.

(j) *Safe-guarding proposals.* Competitive proposal information shall be protected in accordance with FAR 15.207, Handling proposals and information. Unsolicited proposals shall be protected in accordance with FAR 15.608, Prohibitions, and FAR 15.609, Limited use of data.

(1) Evaluation team members, the source selection authority, and Agreement Officers are responsible for protecting sensitive information on the award of a grant or cooperative agreement and for determining who is authorized to receive such information. Sensitive information includes: information contained in proposals; information prepared for NASA's evaluation of proposals; the rankings of proposals for an award; reports and evaluations of source selection panels, boards, or advisory councils; and other information deemed sensitive by the source selection authority or by the Agreement Officer.

(2) No sensitive information shall be disclosed to persons not on the evaluation team or evaluation panel, unless the Selecting Official or the Agreement Officer has approved disclosure based upon an unequivocal ''need-to-know'' and the individual receiving the information has signed a Non-Disclosure Certificate. All attendees at formal source selection presentations and briefings shall be required to sign an Attendance Roster and a Disclosure Certificate. The attendance rosters and certificates shall be maintained in official files for a minimum of six months after award.

(3) The improper disclosure of sensitive information could result in criminal prosecution or an adverse action.

(k) *Controls on the use of outside evaluators.* The use of outside evaluators shall be approved in accordance with NFS 1815.207–70(b). A cover sheet with the following legend shall be affixed to data provided to outside evaluators:

Government Notice for Handling Proposals

This proposal shall be used and disclosed for evaluation purposes only, and a copy of this Government notice shall be applied to any reproduction or abstract thereof. Any authorized restrictive notices which the submitter places on this proposal shall also be strictly complied with.

(l) *Consortium awards.* If the cooperative agreement is to be awarded to a consortium, a completed, formally executed Articles of Collaboration is required prior to award.

(m) *Printing, binding, and duplicating.* Proposals for efforts that involve printing, binding, and duplicating in excess of 25,000 pages are subject to the regulations of the Congressional Joint Committee on Printing. The technical office will refer such proposals to the Installation Central Printing Management Officer (ICPMO) to ensure compliance with NPD 1490.1. The Agreement Officer will be advised in writing of the results of the ICPMO review.

§ 1274.210 Unsolicited proposals.

(a) For a proposal to be considered a valid unsolicited proposal, the submission must;

(1) Be innovative and unique;

(2) Be independently originated and developed by the recipient;

(3) Be prepared without Government supervision, endorsement, direction or direct Government involvement;

(4) Include sufficient technical and cost detail to permit a determination that Government support could be worthwhile and the proposed work could benefit the agency's research and development or other mission responsibilities; and

(5) Not be an advance proposal for a known agency requirement that can be acquired by competitive methods.

(b) For each unsolicited proposal selected for award, the cognizant technical office will prepare and furnish to the Agreement Officer, a justification for acceptance of an unsolicited proposal (JAUP). The JAUP shall be submitted for the approval of the Agreement Officer after review and concurrence at a level above the technical officer. The evaluator shall consider the following factors, in addition to any others appropriate for the particular proposal:

(1) Unique and innovative methods, approaches or concepts demonstrated by the proposal.

(2) Overall scientific or technical merits of the proposal.

(3) The offeror's capabilities, related experience, facilities, techniques, or unique combinations of these which are integral factors for achieving the proposal objectives.

(4) The qualifications, capabilities, and experience of the proposed key personnel who are critical in achieving the proposal objectives.

(5) Current, open solicitations under which the unsolicited proposal could be evaluated.

(c) Unsolicited proposals shall be handled in accordance with NFS 1815.606, ''Agency Procedures''.

(d) Unsolicited proposals from foreign sources are subject to NPD 1360.2, ''Development of International Cooperation in Space and Aeronautics Programs''.

(e) There is no requirement for a public announcement of the award of a cooperative agreement. However, in those instances where a public announcement is planned, per NFS 1805.303–71(a)(3), the NASA Administrator shall be notified at least five (5) workdays prior to a planned public announcement for award of a cooperative agreement (regardless of dollar value), if it is thought the Agreement may be of significant interest to Headquarters.

(f) Additional information regarding unsolicited proposals is available in the handbook entitled, ''Guidance for the Preparation and Submission of Unsolicited Proposals'', which is available on the NASA Acquisition Internet Service Website at: *http://ec.msfc.nasa.gov/hq/library/unSol-Prop.html.*

§ 1274.211 Award procedures.

(a) In accordance with NFS 1805.303–71(a)(3), the NASA Administrator shall be notified at least five (5) workdays prior to a planned public announcement for award of a cooperative agreement (regardless of dollar value), if it is thought the agreement may be of significant interest to Headquarters.

(b) For awards that are the result of a competitive source selection, the technical officer will prepare and furnish to the agreement officer a signed selection statement based on the selection criteria stated in the solicitation.

(1) *General.* Multiple year cooperative agreements are encouraged, but normally they should extend no more than three years.

(2) *Bilateral award.* All cooperative agreements shall be awarded on a bilateral basis.

(3) *Central Contractor Registration (CCR).* Prior to implementation of the Integrated Financial Management (IFM) System at each center, all grant and cooperative agreement recipients are required to register in the Department of Defense (DOD) Central Contractor Registration (CCR) database. Registration is required in order to obtain a Commercial and Government Entity (CAGE) code, which will be used as a grant and cooperative agreement identification number for the new system. The agreement officer shall verify that the prospective awardee is registered in the CCR database using the DUNS number or, if applicable, the DUNS+4 number, via the Internet at http://www.ccr2000.com or by calling toll free: 888–227–2423, commercial: 616–961–5757.

(4) *Certifications, Disclosures, and Assurances.*—(i) Agreement officers are required to ensure that all necessary certifications, disclosures, and assurances have been obtained prior to awarding a cooperative agreement.

(ii) Each new proposal shall include a certification for debarment and suspension under the requirements of 14 CFR 1265.510 and 1260.117.

(iii) Each new proposal for an award exceeding $100,000 shall include a certification, and a disclosure form (SF LLL) if required, on Lobbying under the requirements of 14 CFR 1271.110 and 1260.117.

(iv) Unless a copy is on file at the NASA center, recipients must furnish an assurance on NASA Form (NF) 1206 on compliance with Civil Rights statutes specified in 14 CFR parts 1250 through 1253.

§ 1274.212 Document format and numbering.

(a) *Formats.* Agreement Officers are authorized to use the format set forth in Exhibit B (available via the Internet at: *http://ec.msfc.nasa.gov/hq/qrcover.htm)* to subpart A of part 1260 of this chapter, with minimum modification, as the standard cooperative agreement cover page for the award of all cooperative agreements (until such time that a revised replacement form is approved, and/or designation is made of a bilateral award letter format to supplement the format set forth in Exhibit B to subpart A of part 1260 of this chapter).

(b) *Cooperative agreement numbering system.* Cooperative agreement numbering may be changed once the Integrated Financial Management (IFM) is implemented. Until IFM is implemented, cooperative agreement numbering shall conform to NFS 1804.7102, except that a NCC prefix will be used in lieu of the NAS prefix. Along with the prefix NCC, a one or two digit Center Identification Number, and a sequence number of up to five digits will be used. Inclusive of the prefix and fiscal year, the total number of characters, digits, and spaces cannot exceed 11.

§ 1274.213 Distribution of cooperative agreements.

Copies of cooperative agreements and modifications will be provided to: payment office, technical officer, administrative agreement officer when delegation has been made (particularly when administrative functions are delegated to DOD or another agency), NASA Center for Aerospace Information (CASI), Attn: Document Processing Section, 7121 Standard Drive, Hanover, MD 21076, and any other appropriate recipient. Copies of the statement of work, contained in the Recipient's proposal and accepted by NASA, will be provided to the administrative agreement officer and CASI. The cooperative agreement file will contain a record of the addresses for distributing agreements and supplements.

§ 1274.214 Inquiries and release of information.

NASA personnel shall follow the procedures established in NFS 1805.402 prior to releasing information to the news media or the general public. The procedures established by NFS 1805.403 shall be followed when responding to inquiries from members of Congress.

Subpart 1274.3—Administration

§ 1274.301 Delegation of administration.

Normally, cooperative agreements will be administered by the awarding activity. NASA Form 1678, NASA Technical Officer Delegation for Cooperative Agreements with Commercial Firms, will be used to delegate responsibilities to the NASA Technical Officer.

§ 1274.302 Transfers, novations, and change of name agreements.

(a) Transfer of cooperative agreements. Novation is the only means by which a cooperative agreement may be transferred from one recipient to another.

(b) Novation and change of name. NASA legal counsel, shall review for legal sufficiency, all novation agreements or change of name agreements of the recipient, prior to formal execution by the agreement officer.

Subpart 1274.4—Property

§ 1274.401 Government Furnished Property.

Property or equipment owned by the Government that will be used in the performance of a cooperative agreement shall be included as part of the Government's percentage (usually 50 percent) of shared costs. In most cases the property or equipment will be categorized as non-cash contributions. Agreement officers may use the procedures promulgated by FAR subpart

45.2, as guidelines to calculate the value of the property or equipment.

§ 1274.402 Contractor acquired property.

As provided in § 1274.923(c), title to property acquired with government funds vests in the government. Under a cost shared cooperative agreement, joint ownership of property equal to the cost-sharing ratio will result if the parties make no specific arrangements regarding such property. The disposition of acquired property should be addressed in the cooperative agreement at the time of award. The cooperative agreement may provide that all such property be contributed by the recipient as a non-cash contribution. A reasonable dollar value must be specified and adequately supported. In this case, title will vest in the recipient. Alternatively, NASA and the recipient may include in the cooperative agreement any other appropriate arrangement for the disposition of acquired property upon completion of the effort.

Subpart 1274.5—Procurement Standards

§ 1274.501 Purpose of procurement standards.

(a) The procurement standards stated in §§ 1274.502 through 1274.510, may not apply to or may supplement the procedures of a commercial recipient that has a purchasing system approved in accordance with the requirements of FAR Subpart 44.3 and NFS 1844.3.

(b) Sections 1274.502 through 1274.510 set forth standards for use by recipients in establishing procedures for the procurement of supplies and other expendable property, equipment, real property and other services with Federal funds. These standards are furnished to ensure that such materials and services are obtained in an effective manner and in compliance with the provisions of applicable Federal statutes and executive orders.

§ 1274.502 Recipient responsibilities.

The standards contained in this section do not relieve the recipient of the contractual responsibilities arising under its contract(s). The recipient is the responsible authority, without recourse to NASA, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in support of an award or other agreement. This includes disputes, claims, protests of award, source evaluation or other matters of a contractual nature. Matters concerning violation of statute are to be referred to such Federal, State or local authority as may have proper jurisdiction.

§ 1274.503 Codes of conduct.

The recipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award. The officers, employees, and agents of the recipient shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to subagreements. However, recipients may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the recipient.

§ 1274.504 Competition.

All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. The recipient shall be alert to organizational conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals shall normally be excluded from competing for such procurements, unless conflicts or apparent conflicts of interest issues have been resolved. Awards shall be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to the recipient, price, quality and other factors considered. Solicitations shall clearly set forth all requirements that the bidder or offeror shall fulfill in order for the bid or offer to be evaluated by the recipient. Any and all bids or offers may be rejected when it is in the recipient's interest to do so.

§ 1274.505 Procurement procedures.

(a) All recipients shall establish written procurement procedures. These procedures shall provide at a minimum, that the conditions in paragraphs (a)(1), (2) and (3) of this section apply.

(1) Recipients avoid purchasing unnecessary items.

(2) Where appropriate, an analysis is made of lease and purchase alternatives to determine which would be the most economical and practical procurement for the Federal Government.

(3) Solicitations for goods and services provide for all of the following:

(i) A clear and accurate description of the technical requirements for the material, product or service to be procured. In competitive procurements, such a description shall not contain features that unduly restrict competition.

(ii) Requirements that the bidder/offeror must fulfill and all other factors to be used in evaluating bids or proposals.

(iii) A description, whenever practicable, of technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards.

(iv) The specific features of ''brand name or equal'' descriptions that bidders are required to meet when such items are included in the solicitation.

(v) The acceptance, to the extent practicable and economically feasible, of products and services dimensioned in the metric system of measurement.

(vi) Preference, to the extent practicable and economically feasible, for products and services that conserve natural resources and protect the environment and are energy efficient.

(b) Positive efforts shall be made by recipients to utilize small business, veteran-owned small business, service-disabled veteran-owned small business, historically underutilized small business, small disadvantaged business, women-owned business concerns, Historically Black Colleges and Universities, and minority educational institutions as subcontractors to the maximum extent practicable. Recipients of NASA awards shall take all of the following steps to further this goal.

(1) Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.

(2) Make information on forthcoming opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.

(3) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.

(4) Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.

(5) Use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.

(c) The type of procuring instruments used (*e.g.*, fixed price contracts, cost reimbursable contracts, purchase orders, and incentive contracts) shall be determined by the recipient but shall be appropriate for the particular procurement and for promoting the best interest of the program or project involved. The ''cost-plus-a-percentage-of-cost'' or ''percentage of construction cost'' methods of contracting shall not be used.

(d) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources. In certain circumstances, contracts with certain parties are restricted by 14 CFR part 1265, the implementation of Executive Orders 12549 and 12689, ''Debarment and Suspension.''

(e) Recipients shall, on request, make available for NASA, pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc., when any of the following conditions apply:

(1) A recipient's procurement procedures or operation fails to comply with the procurement standards in NASA's implementation of this subpart.

(2) The procurement is expected to exceed the small purchase threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation.

(3) The procurement, which is expected to exceed the small purchase threshold, specifies a ''brand name'' product.

(4) The proposed award over the small purchase threshold is to be awarded to other than the apparent low bidder under a sealed bid procurement.

(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the amount of the small purchase threshold.

§ 1274.506 Cost and price analysis.

Some form of cost or price analysis shall be made and documented in the procurement files in connection with every procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicies, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability and allowability.

§ 1274.507 Procurement records.

Procurement records and files for purchases in excess of the small purchase threshold shall include the following at a minimum:

(a) Basis for contractor selection.

(b) Justification for lack of competition when competitive bids or offers are not obtained.

(c) Basis for award cost or price.

§ 1274.508 Contract administration.

A system for contract administration shall be maintained to ensure contractor conformance with the terms, conditions and specifications of the contract and to ensure adequate and timely follow up of all purchases. Recipients shall evaluate contractor performance and document, as appropriate, whether contractors have met the terms, conditions and specifications of the contract.

§ 1274.509 Contract provisions.

The recipient shall include, in addition to provisions to define a sound and complete agreement, the following provisions in all contracts. The following provisions shall also be applied to subcontracts:

(a) Contracts in excess of the simplified acquisition threshold (currently $100,000) shall contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms, and provide for such remedial actions as may be appropriate.

(b) All contracts in excess of the simplified acquisition threshold shall contain suitable provisions for termination by the recipient, including the manner by which termination shall be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(c) All negotiated contracts (except those for less than the small purchase threshold) awarded by recipients shall include a provision to the effect that the recipient, NASA, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions.

(d) For Construction and facility improvements, except as otherwise required by statute, an award that requires the contracting (or subcontracting) for construction or facility improvements shall provide for the recipient to follow its own requirements relating to bid guarantees, performance bonds, and payment bonds unless the construction contract or subcontract exceeds $100,000. For those contracts or subcontracts exceeding $100,000, NASA may accept the bonding policy and requirements of the recipient, provided NASA has made a determination that the Federal Government's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

(1) A bid guarantee from each bidder equivalent to five percent of the bid price. The ''bid guarantee'' shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder shall, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) A performance bond on the part of the contractor for 100 percent of the contract price. A ''performance bond'' is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) A payment bond on the part of the contractor for 100 percent of the contract price. A ''payment bond'' is one executed in connection with a contract to assure payment as required by statute of all persons supplying labor and material in the execution of the work provided for in the contract.

(4) Where bonds are required in the situations described in this section, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties pursuant to 31 CFR

Part 223, ''Surety companies doing business with the United States.''

§ 1274.510 Subcontracts.

Recipients (individual firms or consortia) are not authorized to issue grants or cooperative agreements to subrecipients. All entities that are involved in performing the research and development effort that is the purpose of the cooperative agreement shall be part of the recipient's consortium and not subcontractors. All contracts, including small purchases, awarded by recipients and their contractors shall contain the procurement provisions of Exhibit A to this part, as applicable and may be subject to approval requirements cited in § 1274.925.

Subpart 1274.6—Reports and Records

§ 1274.601 Retention and access requirements for records.

(a) This subpart sets forth requirements for record retention and access to records for awards to recipients.

(b) Financial records, supporting documents, statistical records, and all other records pertinent to an award shall be retained for a period of three years from the date of submission of the final invoice. The only exceptions are the following:

(1) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved and final action taken.

(2) Records for real property and equipment acquired with Federal funds shall be retained for 3 years after final disposition.

(3) When records are transferred to or maintained by NASA, the 3-year retention requirement is not applicable to the Recipient.

(4) Indirect cost rate proposals, cost allocations plans, etc. as specified in paragraph (g) of this section.

(c) Copies of original records may be substituted for the original records if authorized by NASA.

(d) NASA shall request transfer of certain records to its custody from recipients when it determines that the records possess long term retention value. However, in order to avoid duplicate record keeping, NASA may make arrangements for recipients to retain any records that are continuously needed for joint use.

(e) NASA, the Inspector General, Comptroller General of the United States, or any of their duly authorized representatives, have the right of timely and unrestricted access to any books, documents, papers, or other records of Recipients that are pertinent to the awards, in order to make audits, examinations, excerpts, transcripts and copies of such documents. This right also includes timely and reasonable access to a recipient's personnel for the purpose of interview and discussion related to such documents. The rights of access in this paragraph are not limited to the required retention period, but shall last as long as records are retained.

(f) Unless required by statute, NASA shall not place restrictions on recipients that limit public access to the records of recipients that are pertinent to an award, except when NASA can demonstrate that such records shall be kept confidential and would have been exempted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) if the records had belonged to NASA.

(g) Indirect cost rate proposals, cost allocations plans, etc., applies to the following types of documents, and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(1) *If submitted for negotiation.* If the recipient submits to NASA or the-subrecipient submits to the recipient the proposal, plan, or other computation to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts on the date of such submission.

(2) *If not submitted for negotiation.* If the Recipient is not required to submit to NASA or the subrecipient is not required to submit to the recipient the proposal, plan, or other computation for negotiation purposes, then the 3-year retention period for the proposal, plan, or other computation and its supporting records starts at the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

Subpart 1274.7—Suspension or Termination

§ 1274.701 Suspension or termination.

(a) *Suspension.* NASA or the recipient may suspend the cooperative agreement for a mutually agreeable period of time, if an assessment is required to determine whether the agreement should be terminated.

(b) Termination—(1) A cooperative agreement provides both NASA and the recipient the ability to terminate the Agreement if it is in their best interests to do so, by giving the other party prior written notice. Upon receipt of a notice of termination, the receiving party shall take immediate steps to stop the accrual of any additional obligations, which might require payment.

(2) NASA may, for example, terminate the Agreement if the recipient is not making anticipated technical progress, if the recipient materially changes the objectives of the agreement, or if appropriated funds are not available to support the program.

(3) Similarly, the recipient may terminate the agreement if, for example, technical progress is not being made, if the commercial recipient shifts its technical emphasis, or if other technological advances have made the effort obsolete.

(4) If the cooperative agreement is terminated by either NASA or the recipient and NASA elects to continue the project with a party other than the recipient, the right of the government to use data first produced by either NASA or the recipient in the performance of this agreement is covered by § 1274.905(b). See § 1274.208(l)(6) to assure that appropriate language is contained in § 1274.905(b).

Subpart 1274.8—Post-Award/ Administrative Requirements

1274.801 Adjustments to performance costs.

In order to accomplish program objectives, there may be occasions where additional contributions (cash and/or in-kind contributions) by NASA and the recipient beyond the initial agreement may be needed. There may also be occasions where actual costs of NASA and the recipient may be less than initially agreed. In cases where program costs are adjusted, prior to execution of a modification to the agreement, mutual agreement between NASA and the Recipient shall also be reached on the corresponding changes in program requirements such as schedule, work statements and milestone payments. Funding for any work required beyond the initial funding level of the cooperative agreement, shall require submission by the Recipient of a detailed proposal to the Agreement Officer. Prior to execution of a modification increasing NASA's cost share or funding levels, detailed cost analysis techniques may be applied, which may include requests for audits services and/or application of other pricing support techniques.

1274.802 Modifications.

Modifications to the cooperative agreement, in particular, modifications that affect funding, milestone payments, program schedule and statement of work requirements shall be executed on a bilateral basis.

1274.803 Closeout procedures.

(a) Recipients shall submit, within 90 calendar days after the date of completion of the cooperative agreement, all financial, performance, and other reports as required by the terms and conditions of the award. Extensions may be approved when requested by the recipient.

(b) The recipient shall account for any real and personal property acquired with Federal funds or received from the Federal Government in accordance with § 1274.923.

1274.804 Subsequent adjustments and continuing responsibilities.

The closeout of an award does not affect any of the following:

(a) Audit requirements in § 1274.932.

(b) Government Furnished and Contractor Acquired Property requirements in §§ 1274.401 and 1274.402.

(c) Records retention as required in § 1274.601.

Subpart 1274.9—Other provisions and Special Conditions

1274.901 Other provisions and special conditions.

Where applicable, the provisions set forth in this subpart are to be incorporated in and made a part of all cooperative agreements with commercial firms. When included, the provisions at § 1274.902 through § 1274.909 and the provisions at § 1274.933 through § 1274.942 are to be incorporated in full text substantially as stated in this regulation. When required, the provisions at § 1274.910 through § 1274.932, may be incorporated by reference in an enclosure to each cooperative agreement. For inclusion of provisions in subcontracts, see Exhibit A of this part, and § 1274.925.

§ 1274.902 Purpose.

Purpose (XX/XX)

The purpose of this cooperative agreement is to conduct a shared resource project that will lead to _____. This cooperative agreement will advance the technology developments and research which have been performed on _____. The specific objective is to _____. This work will culminate in _____.

(End of provision)

§ 1274.903 Responsibilities.

Responsibilities (XX/XX)

(a) This Cooperative Agreement will include substantial NASA participation during performance of the effort. NASA and the Recipient agree to the following Responsibilities, a statement of cooperative interactions to occur during the performance of this effort. NASA and the Recipient shall exert all reasonable efforts to fulfill the responsibilities stated below.

(b) NASA Responsibilities. The following NASA responsibilities are hereby set forth effective upon the start date, which unless stated otherwise, shall be the execution date of this bilateral Cooperative Agreement. The end date stated below, may be changed by a written bilateral modification:

Responsibilities
Start *Date*/End *Date*

(c) Recipient Responsibilities. The Recipient shall be responsible for particular aspects of project performance as set forth in the technical proposal dated _____, attached hereto (or Statement of Work dated _____, attached hereto). The following responsibilities are hereby set forth effective upon the start date, which unless stated otherwise, shall be the execution date of this bilateral Cooperative Agreement. The end date stated below, may be changed by a written bilateral modification:

Responsibilities
Start *Date*/End *Date*

(d) Since NASA contractors may obtain certain intellectual property rights arising from work for NASA in support of this agreement, NASA will inform Recipient whenever NASA intends to use NASA contractors to perform technical engineering services in support of this agreement.

(e) Unless the Cooperative Agreement is terminated by the parties, end date can only be changed by execution of a bilateral modification

(End of provision)

§ 1274.904 Resource sharing requirements.

Resource Sharing Requirements (XX/XX)

Where NASA and other Government agencies are involved in the cooperative agreement, ''NASA'' shall also mean ''Federal Government''.

(a) NASA and the Recipient will share in providing the resources necessary to perform the agreement. NASA funding and non-cash contributions (personnel, equipment, facilities, etc.) and the dollar value of the Recipient's cash and/or non-cash contribution will be on a _____ (NASA)-_____ (Recipient) basis. Criteria and procedures for the allowability and allocability of cash and non-cash contributions shall be governed by FAR Parts 30 and 31, and NFS Parts 1830 and 1831.

(b) The Recipient's share shall not be charged to the Government under this Agreement or under any other contract, grant, or cooperative agreement, except to the extent that the Recipient's contribution may be allowable IR&D costs pursuant to FAR 31.205–18(e).

(End of provision)

§ 1274.905 Rights in data.

As noted in 1274.208(l)(1), the following provision assumes a substantially equal cost sharing relationship where collaborative research, experimental, developmental, engineering, demonstration, or design activities are to be carried out, such that it is likely that ''proprietary'' information will be developed and/or exchanged under the agreement. If cost sharing is unequal or no extensive research, experimental, developmental, engineering, demonstration, or design activities are likely, a different set of provisions may be appropriate. The Agreement Officer is expected to complete and/or select the appropriate bracketed language under the provision for those paragraphs dealing with data first produced under the cooperative agreement. In addition, the Agreement Officer may, in consultation with the Center's Patent or Intellectual Property Counsel, tailor the provision to fit the particular circumstances of the program and/or the recipient's need to protect specific proprietary information.

Rights in Data (XX/XX)

(a) Definitions

Data, means recorded information, regardless of form, the media on which it may be recorded, or the method of recording. The term includes, but is not limited to, data of a scientific or technical nature, computer software and documentation thereof, and data comprising commercial and financial information.

(b) Data Categories

(1) *General:* Data exchanged between NASA and Recipient under this cooperative agreement will be exchanged without restriction as to its disclosure, use or duplication except as otherwise provided below in this provision.

(2) *Background Data:* In the event it is necessary for Recipient to furnish NASA with Data which existed prior to, or produced outside of, this cooperative agreement, and such Data embodies trade secrets or comprises commercial or financial information which is privileged or confidential, and such Data is so identified with a suitable notice or legend, the Data will be maintained in confidence and disclosed and used by NASA and its contractors (under suitable protective conditions) only for the purpose of carrying out NASA's responsibilities under this cooperative agreement. Upon completion of activities under this agreement, such Data will be disposed of as requested by Recipient.

(3) *Data first produced by Recipient:* In the event Data first produced by Recipient in carrying out Recipient's responsibilities under this cooperative agreement is furnished to NASA, and Recipient considers such Data to embody trade secrets or to

comprise commercial or financial information which is privileged or confidential, and such Data is so identified with a suitable notice or legend, the Data will be maintained in confidence for a period of [insert ''two'' to ''five''] years after development of the data and be disclosed and used by [''NASA'' or ''the Government,'' as appropriate] and its contractors (under suitable protective conditions) only for [insert appropriate purpose; for example: experimental; evaluation; research; development, etc.] by or on behalf of [''NASA'' or ''the Government'' as appropriate] during that period. In order that [''NASA'' or the ''Government'', as appropriate] and its contractors may exercise the right to use such Data for the purposes designated above, NASA, upon request to the Recipient, shall have the right to review and request delivery of Data first produced by Recipient. Delivery shall be made within a time period specified by NASA.

(4) *Data first produced by NASA:* As to Data first produced by NASA in carrying out NASA's responsibilities under this cooperative agreement and which Data would embody trade secrets or would comprise commercial or financial information that is privileged or confidential if it had been obtained from the Recipient, will be marked with an appropriate legend and maintained in confidence for an agreed to period of up to ( ) years [INSERT A PERIOD UP TO 5 YEARS] after development of the information, with the express understanding that during the aforesaid period such Data may be disclosed and used (under suitable protective conditions) by or on behalf of the Government for Government purposes only, and thereafter for any purpose whatsoever without restriction on disclosure and use. Recipient agrees not to disclose such Data to any third party without NASA's written approval until the aforementioned restricted period expires. Use of this data under a separate cooperative agreement or contract issued to a party other than the Recipient for the purpose of continuing the project in the event this cooperative agreement is terminated by either party shall constitute a government purpose.

(5) Copyright—(i) In the event Data is exchanged with a notice indicating the Data is protected under copyright as a published copyrighted work, or are deposited for registration as a published work in the U.S. Copyright Office, the following paid-up licenses shall apply:

(A) If it is indicated on the Data that the Data existed prior to, or was produced outside of, this agreement, the receiving party and others acting on its behalf, may reproduce, distribute, and prepare derivative works for the purpose of carrying out the receiving party's responsibilities under this cooperative agreement; and

(B) If the furnished Data does not contain the indication of paragraph (b)(5)(i)(A) of this section, it will be assumed that the Data was first produced under this agreement, and the receiving party and others acting on its behalf, shall be granted a paid up, nonexclusive, irrevocable, world-wide license for all such Data to reproduce, distribute copies to the public, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the receiving party. For Data that is computer software, the right to distribute shall be limited to potential users in the United States.

(ii) When claim is made to copyright, the Recipient shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship to the data when and if the data are delivered to the Government.

(6) *Oral and visual information.* If information which the Recipient considers to embody trade secrets or to comprise commercial or financial information which is privileged or confidential is disclosed orally or visually to NASA, such information must be reduced to tangible, recorded form (i.e., converted into Data as defined herein), identified and marked with a suitable notice or legend, and furnished to NASA within 10 days after such oral or visual disclosure, or NASA shall have no duty to limit or restrict, and shall not incur any liability for, any disclosure and use of such information.

(7) *Disclaimer of Liability.* Notwithstanding the above, NASA shall not be restricted in, nor incur any liability for, the disclosure and use of:

(i) Data not identified with a suitable notice or legend as set in paragraph (b)(2) of this section; nor

(ii) Information contained in any Data for which disclosure and use is restricted under paragraphs (b)(2) or (3) of this section, if such information is or becomes generally known without breach of the above, is known to or is generated by NASA independently of carrying out responsibilities under this agreement, is rightfully received from a third party without restriction, or is included in data which Participant has, or is required to furnish to the U.S. Government without restriction on disclosure and use.

(c) *Marking of Data.* Any Data delivered under this cooperative agreement, by NASA or the Recipient, shall be marked with a suitable notice or legend indicating the data was generated under this cooperative agreement.

(d) *Lower Tier Agreements.* The Recipient shall include this provision, suitably modified to identify the parties, in all subcontracts or lower tier agreements, regardless of tier, for experimental, developmental, or research work.

(End of provision)

1274.906 Designation of New Technology Representative and Patent Representative.

Designation of New Technology Representative and Patent Representative (XX/XX)

(a) For purposes of administration of the clause of this cooperative agreement entitled ''PATENT RIGHTS—RETENTION BY THE CONTRACTOR (LARGE BUSINESS)'' or ''PATENT RIGHTS—RETENTION BY THE CONTRACTOR (SMALL BUSINESS)'' the following named representatives are hereby designated by the Agreement Officer to administer such clause:

Title/Office Code/Address

New Technology
Representative
Patent
Representative

(b) Reports of reportable items, and disclosure of subject inventions, interim reports, final reports, utilization reports, and other reports required by the clause, as well as any correspondence with respect to such matters, should be directed to the New Technology Representative unless transmitted in response to correspondence or request from the Patent Representative. Inquiries or requests regarding disposition of rights, election of rights, or related matters should be directed to the Patent Representative. This clause shall be included in any subcontract hereunder requiring ''PATENT RIGHTS—RETENTION BY THE CONTRACTOR (LARGE BUSINESS)'' clause or ''PATENT RIGHTS -RETENTION BY THE CONTRACTOR (SMALL BUSINESS)'' clause, unless otherwise authorized or directed by the Agreement Officer. The respective responsibilities and authorities of the above-named representatives are set forth in NFS 1827.305–370.

(End of provision)

§ 1274.907 Disputes.

Disputes (XX/XX)

(a) In the event that a disagreement arises, representatives of the parties shall enter into discussions in good faith and in a timely and cooperative manner to seek resolution. If these discussions do not result in a satisfactory solution, the aggrieved party may seek a decision from the Dispute Resolution Official under paragraph (b) of this provision. This request must be presented no more than (3) three months after the events giving rise to the disagreement have occurred.

(b) The aggrieved party may submit a written request for a decision to the Center Ombudsman, who is designated as the Dispute Resolution Official. The written request shall include a statement of the relevant facts, a discussion of the unresolved issues, and a specification of the clarification, relief, or remedy sought. A copy of this written request and all accompanying materials must be provided to the other party at the same time. The other party shall submit a written position on the matters in dispute within thirty (30) calendar days after receiving this notification that a decision has been requested. The Dispute Resolution Official shall conduct a review of the matters in dispute and render a decision in writing within thirty (30) calendar days of receipt of such written position.

(End of provision)

§ 1274.908 Milestone payments.

Milestone Payments (XX/XX)

(a) By submission of the first invoice, the Recipient is certifying that it has an established accounting system which complies with generally accepted accounting principles, with the requirements of this agreement, and that appropriate arrangements have been made for receiving, distributing, and accounting for Federal funds received under this agreement.

(b) Payments will be made upon the following milestones: [The schedule for

payments may be based upon the Recipient's completion of specific tasks, submission of specified reports, or whatever is appropriate.]

Date/Payment Milestone/Amount

(c) Upon submission by the recipient of invoices in accordance with the provisions of the agreement and upon certification by NASA of completion of the payable milestone, the Agreement Officer shall authorize payment. Payment shall be made within 30 calendar days after receipt of proper invoice. Payment shall be considered as being made on the date of electronic funds transfer. A proper invoice must include the following:

(i) Name and address of the Recipient.

(ii) Invoice date (The Recipient is encouraged to date invoices as close as possible to the date of the mailing or transmission).

(iii) Cooperative agreement number.

(iv) Description, milestone, and extended price of efforts/tasks performed.

(v) Payment terms.

(vi) Name and address of Recipient official to whom payment is to be sent. (Must be the same as that in the cooperative agreement or in a proper notice of assignment).

(vii) Name (where practicable), title, phone number, and mailing address of the person to be notified in the event of a defective invoice.

(viii) Any other information or documentation required by the cooperative agreement.

(ix) Taxpayer identification number (TIN).

(x) While not required, the recipient is strongly encouraged to assign an identification number to each invoice.

(d) A payment milestone may be successfully completed in advance of the date appearing in paragraph (b) of this section. However, payment shall not be made prior to that date without the written consent of the Agreement Officer.

(e) The recipient is not entitled to partial payment for partial completion of a payment milestone.

(f) Unless approved by the Agreement Officer, all preceding payment milestones must be completed before payment can be made for the next payment milestone.

(g)(i) If the Recipient is authorized to submit invoices directly to the NASA paying office, the original invoice should be submitted to:

[Insert the mailing address for submission of cost vouchers]

(ii) If the Recipient is not authorized to submit invoices directly to the NASA paying office, the original invoice should be submitted to the Agreement Officer for certification.

(iii) Copies of the recipient's invoice should be submitted to the following offices:

(A) Copy 1—NASA Agreement Officer.
(B) Copy 2—Auditor.
(C) Copy 3—Contract administration office.
(D) Copy 4—Project management office.
(E) Copy 5—Other recipients as designated by the Agreement Officer.

(End of provision)

§ 1274.909 Term of agreement.

Term of Agreement (XX/XX)

(a) The agreement commences on the effective date indicated on the attached cover sheet and continues until the expiration date indicated on the attached cover sheet unless terminated by either party. If all resources are expended prior to the expiration date of the agreement, the parties have no obligation to continue performance and may elect to cease at that point. The parties may extend the expiration date if additional time is required to complete the milestones at no increase in Government resources. Requests for approval for no-cost extensions must be forwarded to the NASA Agreement Officer no later than ten days prior to the expiration of the award to be considered.

(b) Provisions of this Agreement, which, by their express terms or by necessary implication, apply for periods of time other than that specified as the agreement term, shall be given effect, notwithstanding expiration of the term of the agreement.

(End of provision)

§ 1274.910 Authority.

Authority (XX/XX)

This is a cooperative agreement as defined in 31 U.S.C. 6305 (the Chiles Act) and is entered into pursuant to the authority of 42 U.S.C. 2451, et seq. (the Space Act).

(End of provision)

§ 1274.911 Patent rights.

Patent Rights (XX/XX)

(a) Definitions.

(1) ''Administrator'' means the Administrator or Deputy Administrator of NASA.

(2) ''Invention'' means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code.

(3) ''Made'' when used in relation to any invention means the conception or first actual reduction to practice such invention.

(4) ''Nonprofit organization'' means a domestic university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)), or any domestic nonprofit scientific or educational organization qualified under a State nonprofit organization statute.

(5) ''Practical application'' means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

(6) ''Recipient'' means:

(i) The signatory Recipient party or parties or;

(ii) The Consortium, where a Consortium has been formed for carrying out Recipient responsibilities under this agreement.

(7) ''Small Business Firm'' means a domestic small business concern as defined at 15 U.S.C. 632 and implementing regulations of the Administrator of the Small Business Administration. (For the purpose of this definition, the size standard contained in 13 CFR 121.901 through 121.911 will be used.)

(8) ''Subject Invention'' means any invention of a Recipient and/or Government employee conceived or first actually reduced to practice in the performance of work under this Agreement.

(9) ''Manufactured substantially in the United States'' means the product must have over 50 percent of its components manufactured in the United States. This requirement is met if the cost to the Recipient of the components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all components required to make the product. (In making this determination only the product and its components shall be considered.) The cost of each component includes transportation costs to the place of incorporation into the product and any applicable duty (whether or not a duty-free entry certificate is issued). Components of foreign origin of the same class or kind for which determinations have been made in accordance with FAR 25.102(a)(3) and (4) are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

(b) Allocation of Principal Rights.

(1) Recipient Inventions. For other than Small Business Firm or Nonprofit organization Recipients, the ''PATENT RIGHTS—RETENTION BY RECIPIENT (LARGE BUSINESS)'' provision applies. For Small Business Firm and Nonprofit organization Recipients, the ''PATENT RIGHTS—RETENTION BY RECIPIENT (SMALL BUSINESS)'' provision applies.

(2) NASA Inventions. NASA will use reasonable efforts to report inventions made by NASA employees as a consequence of, or which bear a direct relation to, the performance of specified NASA activities under this cooperative agreement and, upon timely request, NASA will use its best efforts to grant the Recipient or designated Consortium Member (if applicable) the first option to acquire either an exclusive or partially exclusive, revocable, royalty-bearing license, on terms to be subsequently negotiated, for any patent applications and patents covering such inventions, and subject to the license reserved in paragraph (b)(5)(i) of this section. Upon application in compliance with 37 CFR part 404—Licensing of Government Owned Inventions, the Recipient or each Consortium Member (if applicable), shall be granted a revocable, nonexclusive, royalty-free license in each patent application filed in any country on a subject invention and any resulting patent in which the Government acquires title. Each nonexclusive license may extend to subsidiaries and affiliates, if any, within the corporate structure of the licensee and includes the right to grant sublicenses of the same scope to the extent the licensee was legally obligated to do so at the time the cooperative agreement was signed.

(3) NASA Contractor Inventions. In the event NASA contractors are tasked to perform work in support of specified NASA activities under this cooperative agreement and inventions are made by contractor employees, the recipient will normally retain title to its employee inventions in accordance with 35 U.S.C. 202, 14 CFR part 1245, and E.O. 12591. In the event the recipient decides not to pursue right to title in any such invention and NASA obtains title to such inventions, NASA will use reasonable efforts to report such inventions and, upon timely request, NASA will use its best efforts to grant the Recipient or designated Consortium Member (if applicable) the first option to acquire either an exclusive or partially exclusive, revocable, royalty-bearing license, upon terms to be subsequently negotiated, for any patent applications and patents covering such inventions, and subject to the license reserved in paragraph (b)(5)(ii) of this section. Upon application in compliance with 37 CFR part 404—Licensing of Government Owned Inventions, the Recipient or each Consortium Member (if applicable), shall be granted a revocable, nonexclusive, royalty-free license in each patent application filed in any country on a subject invention and any resulting patent in which the Government acquires title. Each nonexclusive license may extend to subsidiaries and affiliates, if any, within the corporate structure of the licensee and includes the right to grant sublicenses of the same scope to the extent the licensee was legally obligated to do so at the time the cooperative agreement was signed.

(4) Joint NASA and Recipient Inventions. NASA and Recipient agree to use reasonable efforts to identify and report to each other any inventions made jointly between NASA employees (or employees of NASA contractors) and employees of Recipient.

(i) For other than small business firms and nonprofit organizations the Administrator may agree that the United States will refrain from exercising its undivided interest in a manner inconsistent with Recipient's commercial interest and to cooperate with Recipient in obtaining patent protection on its undivided interest on any waived inventions subject, however, to the condition that Recipient makes its best efforts to bring the invention to the point of practical application at the earliest practicable time. In the event that the Administrator determines that such efforts are not undertaken, the Administrator may void NASA's agreement to refrain from exercising its undivided interest and grant licenses for the practice of the invention so as to further its development. In the event that the Administrator decides to void NASA's agreement to refrain from exercising its undivided interest and grant licenses for this reason, notice shall be given to the Inventions and Contributions Board as to why such action should not be taken. Either alternative will be subject to the applicable license or licenses reserved in paragraph (b)(5) of this section.

(ii) For small business firms and nonprofit organization, NASA may assign or transfer whatever rights it may acquire in a subject invention from its employee to the Recipient as authorized by 35 U.S.C. 202(e).

(5) Minimum rights reserved by the Government. Any license or assignment granted Recipient pursuant to paragraphs (b)(2), (b)(3), or (b)(4) of this section will be subject to the reservation of the following licenses:

(i) As to inventions made solely or jointly by NASA employees, the irrevocable, royalty-free right of the Government of the United States to practice and have practiced the invention by or on behalf of the United States; and

(ii) As to inventions made solely by, or jointly with, employees of NASA contractors, the rights in the Government of the United States as set forth in paragraph (b)(5)(i) of this section, as well as the revocable, nonexclusive, royalty-free license in the contractor as set forth in 14 CFR 1245.108.

(6) Preference for United States manufacture. The Recipient agrees that any products embodying subject inventions or produced through the use of subject inventions shall be manufactured substantially in the United States. However, in individual cases, the requirement to manufacture substantially in the United States may be waived by the Associate Administrator for Procurement (Code HS) with the concurrence of the Associate General Counsel for Intellectual Property upon a showing by the Recipient that under the circumstances domestic manufacture is not commercially feasible.

(7) Work performed by the Recipient under this cooperative agreement is considered undertaken to carry out a public purpose of support and/or stimulation rather than for acquiring property or services for the direct benefit or use of the Government. Accordingly, such work by the Recipient is not considered ''by or for the United States'' and the Government assumes no liability for infringement by the Recipient under 28 U.S.C. 1498.

(End of provision)

§ 1274.912 Patent Rights—Retention by the recipient (large business).

Patent Rights—Retention by the Recipient (Large Business) (XX/XX)

(a) Definitions.

(1) ''Administrator,'' as used in this clause, means the Administrator of the National Aeronautics and Space Administration (NASA) or duly authorized representative.

(2) ''Invention,'' as used in this clause, means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the U.S.C.

(3) ''Made,'' as used in relation to any invention, means the conception or first actual reduction to practice such invention.

(4) ''Nonprofit organization,'' as used in this clause, means a domestic university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)), or any domestic nonprofit scientific or educational organization qualified under a State nonprofit organization statute.

(5) ''Practical application,'' as used in this clause, means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in case of a machine or system; and, in each, case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

(6) ''Reportable item,'' as used in this clause, means any invention, discovery, improvement, or innovation of the Recipient, whether or not the same is or may be patentable or otherwise protectable under Title 35 of the United States Code, conceived or first actually reduced to practice in the performance of any work under this contract or in the performance of any work that is reimbursable under any clause in this contract providing for reimbursement of costs incurred prior to the effective date of this contract.

(7) ''Small business firm,'' as used in this clause, means a domestic small business concern as defined at 15 U.S.C. 632 and implementing regulations of the Administrator of the Small Business Administration. (For the purpose of this definition, the size standard contained in 13 CFR 121.901 through 121.911 will be used.)

(8) ''Subject invention,'' as used in this clause, means any reportable item which is or may be patentable or otherwise protectable under Title 35 of the United States Code, or any novel variety of plant that is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321, *et seq.*).

(9) ''Manufactured substantially in the United States'' means the product must have over 50 percent of its components manufactured in the United States. This requirement is met if the cost to the Recipient of the components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all components required to make the product. (In making this determination only the product and its components shall be considered.) The cost of each component includes transportation costs to the place of incorporation into the product and any applicable duty (whether or not a duty-free entry certificate is issued). Components of foreign origin of the same class or kind for which determinations have been made in accordance with Federal Acquisition Regulation 25.102(a)(3) and (4) are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

(b) Allocation of principal rights—(1) Presumption of title. (i) Any reportable item that the Administrator considers to be a subject invention shall be presumed to have been made in the manner specified in paragraph (1) or (2) of section 305(a) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2457(a)) (hereinafter called ''the Act''), and the above presumption shall be conclusive unless at the time of reporting the reportable item the Recipient submits to the Agreement Officer a written statement, containing supporting details, demonstrating that the reportable item was not made in the manner specified in paragraph (1) or (2) of section 305(a) of the Act.

(ii) Regardless of whether title to a given subject invention would otherwise be subject

to an advance waiver or is the subject of a petition for waiver, the Recipient may nevertheless file the statement described in paragraph (b)(1)(i) of this section. The Administrator will review the information furnished by the Recipient in any such statement and any other available information relating to the circumstances surrounding the making of the subject invention and will notify the Recipient whether the Administrator has determined that the subject invention was made in the manner specified in paragraph (1) or (2) of section 305(a) of the Act.

(2) Property rights in subject inventions. Each subject invention for which the presumption of paragraph (b)(1)(i) of this section is conclusive or for which there has been a determination that it was made in the manner specified in paragraph (1) or (2) of section 305(a) of the Act shall be the exclusive property of the United States as represented by NASA unless the Administrator waives all or any part of the rights of the United States, as provided in paragraph (b)(3) of this section.

(3) Waiver of rights.—(i) Section 305(f) of the Act provides for the promulgation of regulations by which the Administrator may waive the rights of the United States with respect to any invention or class of inventions made or that may be made under conditions specified in paragraph (1) or (2) of section 305(a) of the Act. The promulgated NASA Patent Waiver Regulations, 14 CFR part 1245, subpart 1, have adopted the Presidential memorandum on Government Patent Policy of February 18, 1983, as a guide in acting on petitions (requests) for such waiver of rights.

(ii) As provided in 14 CFR part 1245, subpart 1, Recipients may petition, either prior to execution of the Agreement or within 30 days after execution of the Agreement, for advance waiver of rights to any or all of the inventions that may be made under an Agreement. If such a petition is not submitted, or if after submission it is denied, the Recipient (or an employee inventor of the Recipient may petition for waiver of rights to an identified subject invention within eight months of first disclosure of invention in accordance with paragraph (e)(2) of this section or within such longer period as may be authorized in accordance with 14 CFR 1245.105. Further procedures are provided in the REQUESTS FOR WAIVER OF RIGHTS—LARGE BUSINESS provision.

(c) Minimum rights reserved by the Government—(1) With respect to each Recipient subject invention for which a waiver of rights is applicable in accordance with 14 CFR part 1245, subpart 1, the Government reserves—

(i) An irrevocable, royalty-free license for the practice of such invention throughout the world by or on behalf of the United States or any foreign government in accordance with any treaty or agreement with the United States; and

(ii) Such other rights as stated in 14 CFR 1245.107.

(2) Nothing contained in this paragraph shall be considered to grant to the Government any rights with respect to any invention other than a subject invention.

(d) Minimum rights to the Recipient—(1) The Recipient is hereby granted a revocable, nonexclusive, royalty-free license in each patent application filed in any country on a Recipient subject invention and any resulting patent in which the Government acquires title, unless the Recipient fails to disclose the subject invention within the times specified in paragraph (e)(2) of this section. The Recipient's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Recipient is a party and includes the right to grant sublicenses of the same scope to the extent the Recipient was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of the Administrator except when transferred to the successor of that part of the Recipient's business to which the invention pertains.

(2) The Recipient's domestic license may be revoked or modified by the Administrator to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with 14 CFR part 1245, subpart 3, Licensing of NASA Inventions. This license will not be revoked in that field of use or the geographical areas in which the Recipient has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the Administrator to the extent the Recipient, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, the Recipient will be provided a written notice of the Administrator's intention to revoke or modify the license, and the Recipient will be allowed 30 days (or such other time as may be authorized by the Administrator for good cause shown by the Recipient) after the notice to show cause why the license should not be revoked or modified. The Recipient has the right to appeal, in accordance with 14 CFR 1245.112, any decision concerning the revocation or modification of its license.

(e) Invention identification, disclosures, and reports—(1) The Recipient shall establish and maintain active and effective procedures to assure that reportable items are promptly identified and disclosed to Recipient personnel responsible for the administration of this clause within six months of conception and/or first actual reduction to practice, whichever occurs first in the performance of work under this contract. These procedures shall include the maintenance of laboratory notebooks or equivalent records and other records as are reasonably necessary to document the conception and/or the first actual reduction to practice of the reportable items, and records that show that the procedures for identifying and disclosing reportable items are followed. Upon request, the Recipient shall furnish the Agreement Officer a description of such procedures for evaluation and for determination as to their effectiveness.

(2) The Recipient will disclose each reportable item to the Agreement Officer within two months after the inventor discloses it in writing to Recipient personnel responsible for the administration of this clause or, if earlier, within six months after the Recipient becomes aware that a reportable item has been made, but in any event for subject inventions before any on sale, public use, or publication of such invention known to the Recipient. The disclosure to the agency shall be in the form of a written report and shall identify the Agreement under which the reportable item was made and the inventor(s) or innovator(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and physical, chemical, biological, or electrical characteristics of the reportable item. The disclosure shall also identify any publication, on sale, or public use of any subject invention and whether a manuscript describing such invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the agency, the Recipient will promptly notify the agency of the acceptance of any manuscript describing a subject invention for publication or of any on sale or public use planned by the Recipient for such invention.

(3) The Recipient shall furnish the Agreement Officer the following:

(i) Interim reports every 12 months (or such longer period as may be specified by the Agreement Officer) from the date of the Agreement, listing reportable items during that period, and certifying that all reportable items have been disclosed (or that there are no such inventions) and that the procedures required by paragraph (e)(1) of this section have been followed.

(ii) A final report, within three months after completion of the work, listing all reportable items or certifying that there were no such reportable items, and listing all subcontracts at any tier containing a patent rights clause or certifying that there were no such subcontracts.

(4) The Recipient agrees, upon written request of the Agreement Officer, to furnish additional technical and other information available to the Recipient as is necessary for the preparation of a patent application on a subject invention and for the prosecution of the patent application, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions.

(5) The Recipient agrees, subject to 48 CFR (FAR) 27.302(j), that the Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause.

(f) Examination of records relating to inventions—(1) The Agreement Officer or any authorized representative shall, pursuant to the Retention and Examination of Records provision of this cooperative agreement, have the right to examine any books (including laboratory notebooks), records, and documents of the Recipient relating to the conception or first actual reduction to

practice of inventions in the same field of technology as the work under this contract to determine whether—

(i) Any such inventions are subject inventions;

(ii) The Recipient has established and maintained the procedures required by paragraph (e)(1) of this section; and

(iii) The Recipient and its inventors have complied with the procedures.

(2) If the Agreement Officer learns of an unreported Recipient invention that the Agreement Officer believes may be a subject inventions, the Recipient may be required to disclose the invention to the agency for a determination of ownership rights.

(3) Any examination of records under this paragraph will be subject to appropriate conditions to protect the confidentiality of the information involved.

(g) Subcontracts—(1) Unless otherwise authorized or directed by the Agreement Officer, the Recipient shall—

(i) Include this Clause Patent Rights—Retention by the Recipient—(Large Business) (suitably modified to identify the parties) in any subcontract hereunder (regardless of tier) with other than a small business firm or nonprofit organization for the performance of experimental, developmental, or research work; and

(ii) Include the clause Patent Right—Retention by the Recipient—(Small Business) (suitably modified to identify the parties) in any subcontract hereunder (regardless of tier) with a small business firm or nonprofit organization for the performance of experimental, developmental, or research work.

(2) In the event of a refusal by a prospective subcontractor to accept such a clause the Recipient—

(i) Shall promptly submit a written notice to the Agreement Officer setting forth the subcontractor's reasons for such refusal and other pertinent information that may expedite disposition of the matter; and

(ii) Shall not proceed with such subcontract without the written authorization of the Agreement Officer.

(3) The Recipient shall promptly notify the Agreement Officer in writing upon the award of any subcontract at any tier containing a patent rights clause by identifying the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Agreement Officer, the Recipient shall furnish a copy of such subcontract, and, no more frequently than annually, a listing of the subcontracts that have been awarded.

(4) The subcontractor will retain all rights provided for the Recipient in the clause of paragraph (g)(1)(i) or (1)(ii) of this section, whichever is included in the subcontract, and the Recipient will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(5) Notwithstanding paragraph (g)(4) of this section, and in recognition of the contractor's substantial contribution of funds, facilities and/or equipment to the work performed under this cooperative agreement, the Recipient is authorized, subject to the rights of NASA set forth elsewhere in this clause, to:

(i) Acquire by negotiation and mutual agreement rights to a subcontractor's subject inventions as the Recipient may deem necessary to obtaining and maintaining of such private support; and

(ii) Request, in the event of inability to reach agreement pursuant to paragraph (g)(5)(i) of this section, that NASA invoke exceptional circumstances as necessary pursuant to 37 CFR 401.3(a)(2) if the prospective subcontractor is a small business firm or organization, or for all other organizations, request that such rights for the Recipient be included as an additional reservation in a waiver granted pursuant to 14 CFR part 1245, subpart 1. Any such requests to NASA should be prepared in consideration of the following guidance and submitted to the contract officer.

(A) *Exceptional circumstances:* A request that NASA make an ''exceptional circumstances'' determination pursuant to 37 CFR 401.3(a)(2) must state the scope of rights sought by the Recipient pursuant to such determination; identify the proposed subcontractor and the work to be performed under the subcontract; and state the need for the determination.

(B) *Waiver petition:* The subcontractor should be advised that unless it requests a waiver of title pursuant to the NASA Patent Waiver Regulations (14 CFR part 1245, subpart 1), NASA will acquire title to the subject invention (42 U.S.C. 2457, as amended, sec. 305). If a waiver is not requested or granted, the Recipient may request a license from NASA (see licensing of NASA inventions, 14 CFR Part 1245, subpart 3). A subcontractor requesting a waiver must follow the procedures set forth in the attached clause REQUESTS FOR WAIVER OF RIGHTS—LARGE BUSINESS.

(h) *Preference for United States manufacture.* The Recipient agrees that any products embodying subject inventions or produced through the use of subject inventions shall be manufactured substantially in the United States. However, in individual cases, the requirement to manufacture substantially in the United States may be waived by the Associate Administrator for Procurement (Code HS) with the concurrence of the Associate General Counsel for Intellectual Property upon a showing by the Recipient that under the circumstances domestic manufacture is not commercially feasible.

(i) *March-in rights.* The Recipient agrees that, with respect to any subject invention in which it has acquired title, NASA has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the agency to require the Recipient, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Subcontractor, assignee, or exclusive licensee refuses such a request NASA has the right to grant such a license itself if the Federal agency determines that—

(1) Such action is necessary because the Recipient or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Recipient, assignee, or their licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Recipient, assignee, or licensees; or

(4) Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(End of provision)

§ 1274.913 Patent rights—retention by the recipient (small business).

Patent Rights—Retention by the Recipient (Small Business) (XX/XX)

(a) Definitions—

(1) ''Invention,'' as used in this clause, means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the U.S.C.

(2) ''Made,'' as used in this clause, when used in relation to any invention means the conception or first actual reduction to practice such invention.

(3) ''Nonprofit organization,'' as used in this clause, means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

(4) ''Practical application,'' as used in this clause, means to manufacture, in the case of a composition of product; to practice, in the case of a process or method, or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

(5) ''Small business firm,'' as used in this clause, means a small business concern as defined at section 2 of Pub. L. 85–536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in Government procurement and subcontracting at 13 CFR 121.901 through 121.911 will be used.

(6) ''Subject invention,'' as used in this clause, means any invention of the Subcontractor conceived or first actually reduced to practice in the performance of work under this Agreement.

(7) ''Manufactured substantially in the United States'' means the product must have over 50 percent of its components manufactured in the United States. This requirement is met if the cost to the Recipient

of the components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all components required to make the product. (In making this determination only the product and its components shall be considered.) The cost of each component includes transportation costs to the place of incorporation into the product and any applicable duty (whether or not a duty-free entry certificate is issued). Components of foreign origin of the same class or kind for which determinations have been made in accordance with FAR 25.102(a)(3) and (4) are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

(b) Allocation of principal rights. The Recipient may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the Recipient retains title, the Federal Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(c) Invention disclosure, election of title, and filing of patent application by Recipient—(1) The Recipient will disclose each subject invention to NASA within two months after the inventor discloses it in writing to Recipient personnel responsible for patent matters. The disclosure to the agency shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the agency, the Recipient will promptly notify the agency of the acceptance of any manuscript describing the invention for publication or of any sale or public use planned by the Recipient.

(2) The Recipient will elect in writing whether or not to retain title to any such invention by notifying NASA within two years of disclosure to the Federal agency. However, in any case where publication, on sale or public use has initiated the one-year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by the agency to a date that is no more than 60 days prior to the end of the statutory period.

(3) The Recipient will file its initial patent application on a subject invention to which it elects to retain title within one year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The Recipient will file patent applications in additional countries or international patent offices within either 10 months of the corresponding initial patent application of six months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) Requests for extension of the time for disclosure election, and filing under paragraphs (c)(1), (2), and (3) of this section may, at the discretion of the agency, be granted.

(d) Conditions when the Government may obtain title. The Recipient will convey to NASA, upon written request, title to any subject invention—(1) If the Recipient fails to disclose or elect title to the subject invention within the times specified in paragraph (c) of this section, or elects not to retain title; provided, that the agency may only request title within 60 days after learning of the failure of the Recipient to disclose or elect within the specified times.

(2) In those countries in which the Recipient fails to file patent applications within the times specified in paragraph (c) of this section; provided, however, that if the Recipient has filed a patent application in a country after the times specified in paragraph (c) of this section, but prior to its receipt of the written request of the Federal agency, the Recipient shall continue to retain title in that country.

(3) In any country in which the Recipient decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.

(e) Minimum rights to Recipient and protection of the Recipient right to file—(1) The Recipient will retain a nonexclusive, royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the Recipient fails to disclose the invention within the times specified in paragraph (c) of this section. The Recipient's license extends to its domestic subsidiary and affiliates, if any, within the corporate structure of which the Recipient is a party and includes the right to grant sublicenses of the same scope to the extent the Recipient was legally obligated to do so at the time the agreement was awarded. The license is transferable only with the approval of NASA, except when transferred to the successor of that part of the Recipient's business to which the invention pertains.

(2) The Contractor's domestic license may be revoked or modified by NASA to the extent necessary to achieve expeditious practical application of subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR part 404 and agency licensing regulations (if any). This license will not be revoked in that field of use or the geographical areas in which the Subcontractor has achieved practical application and continues to make the benefits of the invention reasonable accessible to the public. The license in any foreign country may be revoked or modified at the discretion of NASA to the extent the Subcontractor, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, NASA will furnish the Recipient a written notice of its intention to revoke or modify the license, and the Recipient will be allowed 30 days (or such other time as may be authorized by NASA for good cause shown by the Recipient) after the notice to show cause why the license should not be revoked or modified. The Recipient has the right to appeal, in accordance with applicable regulations in 37 CFR part 404 and part 1245, subpart 1, concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of the license.

(f) Recipient action to protect the Government's interest—(1) The Recipient agrees to execute or to have executed and promptly deliver to NASA all instruments necessary to:

(i) establish or confirm the rights the Government has throughout the world in those subject inventions to which the Subcontractor elects to retain title, and,

(ii) convey title to the Federal agency when requested under paragraph (d) of this section and to enable the Government to obtain patent protection throughout the world in that subject invention.

(2) The Recipient agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Recipient each subject invention made under contract in order that the Recipient can comply with the disclosure provisions of paragraph (c) of this section, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by paragraph (c)(1) of this section. The Recipient shall instruct such employees, through employee agreements or other suitable educational programs, on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) The Recipient will notify NASA of any decisions not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response period required by the relevant patent office.

(4) The Recipient agrees to include, within the specification of any United States patent application and any patent issuing thereon covering a subject invention the following statement, ''This invention was made with Government support under (identify the agreement) awarded by NASA. The Government has certain rights in the invention.''

(5) The Recipient shall provide the Agreement Officer the following:

(i) A listing every 12 months (or such longer period as the Agreement Officer may

specify) from the date of the Agreement, of all subject inventions required to be disclosed during the period.

(ii) A final report prior to closeout of the Agreement listing all subject inventions or certifying that there were none.

(iii) Upon request, the filing date, serial number, and title, a copy of the patent application, and patent number and issue date for any subject invention in any country in which the Recipient has applied for patents.

(iv) An irrevocable power to inspect and make copies of the patent application file, by the Government, when a Federal Government employee is a co-inventor.

(g) Subcontracts—(1) Unless otherwise authorized or directed by the Agreement Officer, the Recipient shall—

(i) Include this clause (Patent Rights—Retention by the Recipient (Small Business)), suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, or research work to be performed by a small business firm or domestic nonprofit organization; and

(ii) Include in all other subcontracts, regardless of tier, for experimental, developmental, or research work the patent rights clause (Patent Rights—Retention by the Recipient (Large Business).

(2) In the event of a refusal by a prospective subcontractor to accept such a clause the Recipient—

(i) Shall promptly submit a written notice to the Agreement Officer setting forth the subcontractor's reasons for such refusal and other pertinent information that may expedite disposition of the matter; and

(ii) Shall not proceed with such subcontract without the written authorization of the Agreement Officer.

(3) The Recipient shall promptly notify the Agreement Officer in writing upon the award of any subcontract at any tier containing a patent rights clause by identifying the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Agreement Officer, the Recipient shall furnish a copy of such subcontract, and, no more frequently than annually, a listing of the subcontracts that have been awarded.

(4) The subcontractor will retain all rights provided for the Recipient in the clause under paragraph (g)(1)(i) or (g)(1)(ii) of this section, whichever is included in the subcontract, and the Recipient will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(5) Notwithstanding paragraph (g)(4) of this section, and in recognition of the contractor's substantial contribution of funds, facilities and/or equipment to the work performed under this cooperative agreement, the Recipient is authorized, subject to the rights of NASA set forth elsewhere in this clause, to—

(i) Acquire by negotiation and mutual agreement rights to a subcontractor's subject inventions as the Recipient may deem necessary to obtaining and maintaining of such private support; and

(ii) Request, in the event of inability to reach agreement pursuant to paragraph (g)(5)(i) of this section that NASA invoke exceptional circumstances as necessary pursuant to 37 CFR 401.3(a)(2) if the prospective subcontractor is a small business firm or organization, or for all other organizations, request that such rights for the Recipient be included as an additional reservation in a waiver granted pursuant to 14 CFR part 1245, subpart 1. Any such requests to NASA should be prepared in consideration of the following guidance and submitted to the contract office:

(A) *Exceptional circumstances:* A request that NASA make an ''exceptional circumstances'' determination pursuant to 37 CFR 401.3(a)(2) must state the scope of rights sought by the Recipient pursuant to such determination; identify the proposed subcontractor and the work to be performed under the subcontract; and state the need for the determination.

(B) *Waiver petition:* The subcontractor should be advised that unless it requests a waiver of title pursuant to the NASA Patent Waiver Regulations (14 CFR part 1245, subpart 1), NASA will acquire title to the subject invention (42 U.S.C. 2457, as amended, sec. 305). If a waiver is not requested or granted, the Recipient may request a license from NASA (see licensing of NASA inventions, 14 CFR Part 1245, Subpart 3). A subcontractor requesting a waiver must follow the procedures set forth in the REQUESTS FOR WAIVER OF RIGHTS—LARGE BUSINESS provision.

(h) Reporting on utilization of subject inventions. The Recipient agrees to submit, on request, periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Recipient or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Recipient, and such other data and information as the agency may reasonably specify. The Recipient also agrees to provide additional reports as may be requested by the agency in connection with any march-in proceeding under-taken by the agency in accordance with paragraph (i) of this section. As required by 35 U.S.C. 202(c)(5), the agency agrees it will not disclose such information to persons outside the Government without permission of the Recipient.

(i) Preference for United States manufacture. The Recipient agrees that any products embodying subject inventions or produced through the use of subject inventions shall be manufactured substantially in the United States. However, in individual cases, the requirement to manufacture substantially in the United States may be waived by the Associate Administrator for Procurement (Code HS) with the concurrence of the Associate General Counsel for Intellectual Property upon a showing by the Recipient that under the circumstances domestic manufacture is not commercially feasible.

(j) March-in rights. The Recipient agrees that, with respect to any subject invention in which it has acquired title, NASA has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the agency to require the Recipient, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Subcontractor, assignee, or exclusive licensee refuses such a request NASA has the right to grant such a license itself if the Federal agency determines that—

(1) Such action is necessary because the Recipient or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Recipient, assignee, or their licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Recipient, assignee, or licensees; or

(4) Such action is necessary because the agreement required by paragraph (i) of this section has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(k) Special provisions for Agreements with nonprofit organizations. If the Recipient is a nonprofit organization, it agrees that:

(1) Rights to a subject invention in the United States may not be assigned without the approval of NASA, except where such assignment is made to an organization which has one of its primary functions the management of inventions; *provided*, that such assignee will be subject to the same provisions as the Recipient;

(2) The Recipient will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when NASA deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;

(3) The balance of any royalties or income earned by the Recipient with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions will be utilized for the support of scientific research or education; and

(4) It will make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms, and that it will give a preference to a small business firm when licensing a subject invention if the Recipient determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; *provided* that the Recipient is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the Recipient. However, the Recipient agrees that the Secretary of

Commerce may review the Contractor's licensing program and decisions regarding small business applicants, and the Recipient will negotiate changes to its licensing policies, procedures, or practices with the Secretary of Commerce when the Secretary's review discloses that the Recipient could take reasonable steps to more effectively implement the requirements of this paragraph.

(1) Documentation submissions. A copy of all submissions or requests required by this clause, plus a copy of any reports, manuscripts, publications, or similar material bearing on patent matters, shall be sent to the installation Patent Counsel in addition to any other submission requirements in the cooperative agreement. If any reports contain information describing a ''subject invention'' for which the Recipient has elected or may elect title, NASA will use reasonable efforts to delay public release by NASA or publication by NASA in a NASA technical series, in order for a patent application to be filed, provided that the Recipient identify the information and the ''subject invention'' to which it relates at the time of submittal. If required by the Agreement Officer, the Recipient shall provide the filing date, serial number and title, a copy of the patent application, and a patent number and issue date for any ''subject invention'' in any country in which the Recipient has applied for patents.

(End of provision)

§ 1274.914 Requests for waiver of rights—large business.

Requests For Waiver of Rights—Large Business (XX/XX)

(a) In accordance with the NASA Patent Waiver Regulations, 14 CFR part 1245, subpart 1, waiver of rights to any or all inventions made or that may be made under a NASA agreement, contract or subcontract with other than a small business firm or a domestic nonprofit organization may be requested at different time periods. Advance waiver of rights to any or all inventions that may be made under a contract or subcontract may be requested prior to the execution of the agreement, contract or subcontract, or within 30 days after execution by the selected Recipient. In addition, waiver of rights to an identified invention made and reported under a agreement, contract or subcontract may be requested, even though a request for an advance waiver was not made or, if made, was not granted.

(b) Each request for waiver of rights shall be by petition to the Administrator and shall include an identification of the petitioner; place of business and address; if petitioner is represented by counsel, the name, address, and telephone number of the counsel; the signature of the petitioner or authorized representative; and the date of signature. No specific forms need be used, but the request should contain a positive statement that waiver of rights is being requested under the NASA Patent Waiver Regulations; a clear indication of whether the request is for an advance waiver or for a waiver of rights for an individual identified invention; whether foreign rights are also requested and, if so, the countries, and a citation of the specific Section or Sections of the regulations under which such rights are requested; and the name, address, and telephone number of the party with whom to communicate when the request is acted upon. Requests for advance waiver of rights should, preferably, be included with the proposal, but in any event in advance of negotiations.

(c) Petitions for advance waiver, prior to agreement execution, must be submitted to the Agreement Officer. All other petitions will be submitted to the Patent Representative designated in the contract.

(d) Petitions submitted with proposals selected for negotiation of a agreement will be forwarded by the Contracting or Officer to the installation Patent Counsel for processing and then to the Inventions and Contributions Board. The Board will consider these petitions and where the Board makes the findings to support the waiver, the Board will recommend to the Administrator that waiver be granted, and will notify the petitioner and the Agreement Officer of the Administrator's determination. The Agreement Officer will be informed by the Board whenever there is insufficient time or information or other reasons to permit a decision to be made without unduly delaying the execution of the agreement. In the latter event, the petitioner will be so notified by the Agreement Officer. All other petitions will be processed by installation Patent Counsel and forwarded to the Board. The Board shall notify the petitioner of its action and if waiver is granted, the conditions, reservations, and obligations thereof will be included in the Instrument of Waiver. Whenever the Board notifies a petitioner of a recommendation adverse to, or different from, the waiver requested, the petitioner may request reconsideration under procedures set forth in the regulations.

(End of provision)

§ 1274.915 Restrictions on sale or transfer of technology to foreign firms or institutions.

Restrictions on Sale or Transfer of Technology to Foreign Firms or Institutions (XX/XX)

(a) The parties agree that access to technology developments under this Agreement by foreign firms or institutions must be carefully controlled. For purposes of this clause, a transfer includes a sale of the company, or sales or licensing of the technology. Transfers include:

(1) Sales of products or components,

(2) Licenses of software or documentation related to sales of products or components, or

(3) Transfers to foreign subsidiaries of the Recipient for purposes related to this Agreement.

(b) The Recipient shall provide timely notice to the Agreement Officer in writing of any proposed transfer of technology developed under this Agreement. If NASA determines that the transfer may have adverse consequences to the national security interests of the United States, or to the establishment of a robust United States industry, NASA and the Recipient shall jointly endeavor to find alternatives to the proposed transfer which obviate or mitigate potential adverse consequences of the transfer.

(End of provision)

§ 1274.916 Liability and risk of loss.

The following provision is applicable to all cooperative agreements with commercial firms, except programs or projects that are subject to section 431 of Public Law 105–276, which addresses insurance for, or indemnification of, developers of experimental aerospace vehicles.

Liability and Risk of Loss (XX/XX)

(a) With regard to activities undertaken pursuant to this agreement, neither party shall make any claim against the other, employees of the other, the other's related entities (e.g., contractors, subcontractors, etc.), or employees of the other's related entities for any injury to or death of its own employees or employees of its related entities, or for damage to or loss of its own property or that of its related entities, whether such injury, death, damage or loss arises through negligence or otherwise, except in the case of willful misconduct.

(b) To the extent that a risk of damage or loss is not dealt with expressly in this agreement, each party's liability to the other party arising out of this Agreement, whether or not arising as a result of an alleged breach of this Agreement, shall be limited to direct damages only, and shall not include any loss of revenue or profits or other indirect or consequential damages.

(End of provision)

§ 1274.917 Additional funds.

Additional Funds (XX/XX)

Pursuant to this Agreement, NASA is providing a fixed amount of funding for activities to be undertaken under the terms of this cooperative agreement. NASA is under no obligation to provide additional funds. Under no circumstances shall the Recipient undertake any action which could be construed to imply an increased commitment on the part of NASA under this cooperative agreement.

(End of provision)

§ 1274.918 Incremental funding.

Incremental Funding (XX/XX)

(a) Of the award amount indicated on the cover page of this Agreement, only the obligated amount indicated on the cover page of this agreement is available for payment. NASA may supplement the Agreement, as required, until it is fully funded. Any work beyond the funding limit will be at the recipient's risk.

(b) These funds will be obligated as appropriated funds become available without any action required of the Recipient. NASA is not obligated to make payments in excess of the total funds obligated.

(End of provision)

§ 1274.919 Cost principles and accounting standards.

Cost Principles and Accounting Standards (XX/XX)

The expenditure of Government funds by the Recipient and the allowability of costs recognized as a resource contribution by the Recipient (See clause entitled ''Resource Sharing Requirements'') shall be governed by the FAR cost principles implemented by FAR Parts 30 and 31. (If the Recipient is a consortium which includes non-commercial firm members, cost allowability for those members will be determined as follows: Allowability of costs incurred by State, local or federally-recognized Indian tribal governments is determined in accordance with the provisions of OMB Circular A–87, ''Cost Principles for State and Local Governments.'' The allowability of costs incurred by non-profit organizations is determined in accordance with the provisions of OMB Circular A–122, ''Cost Principles for Non-Profit Organizations.'' The allowability of costs incurred by institutions of higher education is determined in accordance with the provisions of OMB Circular A–21, ''Cost Principles for Educational Institutions.'' The allowability of costs incurred by hospitals is determined in accordance with the provisions of Appendix E of 45 CFR part 74, ''Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals.'') Recipient's method for accounting for the expenditure of funds must be consistent with Generally Accepted Accounting Principles.

(End of provision)

§ 1274.920 Responsibilities of the NASA technical officer.

Responsibilities of the NASA Technical Officer (XX/XX)

(a) The NASA Grant Administrator and Technical Officer for this cooperative agreement are identified on the cooperative agreement cover sheet.

(b) The Grant Specialist shall serve as NASA's authorized representative for the administrative elements of all work to be performed under the agreement.

(c) The Technical Officer shall have the authority to issue written Technical Advice which suggests redirecting the project work (e.g., by changing the emphasis among different tasks), or pursuing specific lines of inquiry likely to assist in accomplishing the effort. The Technical Officer shall have the authority to approve or disapprove those technical reports, plans, and other technical information the Recipient is required to submit to NASA for approval. The Technical Officer is not authorized to issue and the Recipient shall not follow any Technical Advice which constitutes work which is not contemplated under this agreement; which in any manner causes an increase or decrease in the resource sharing or in the time required for performance of the project; which has the effect of changing any of the terms or conditions of the cooperative agreement; or which interferes with the Recipient's right to perform the project in accordance with the terms and conditions of this cooperative agreement. In the event of perceived interference, dispute resolution procedures apply as set forth in § 1274.907.

(End of provision)

§ 1274.921 Publications and Reports: non-proprietary research results.

The requirements set forth under this provision may be modified by the Agreement Officer based on specific report needs for the particular grant or cooperative agreement.

Publications and Reports: Non-Proprietary Research Results (XX/XX)

(a) NASA encourages the widest practicable dissemination of research results at all times during the course of the investigation consistent with the other terms of this agreement.

(b) All information disseminated as a result of the cooperative agreement shall contain a statement which acknowledges NASA's support and identifies the cooperative agreement by number.

(c) Prior approval by the NASA Technical Officer is required only where the Recipient requests that the results of the research be published in a NASA scientific or technical publication. Two copies of each draft publication shall accompany the approval request.

(d) Reports shall contain full bibliographic references, abstracts of publications and lists of all other media in which the research was discussed. The Recipient shall submit the following technical reports:

(1) A progress report for every year of the cooperative agreement (except the final year). Each report is due 60 days before the anniversary date of the cooperative agreement and shall describe research accomplished during the report period.

(2) A summary of research is due by 90 days after the expiration date of the cooperative agreement, regardless of whether or not support is continued under another cooperative agreement. This report is intended to summarize the entire research accomplished during the duration of the cooperative agreement.

(e) Progress reports and summaries of research shall display the following on the first page:

(1) Title of the cooperative agreement.

(2) Type of report.

(3) Period covered by the report.

(4) Name and address of the Recipient's organization.

(5) Cooperative agreement number.

(f) An original and two copies, one of which shall be of suitable quality to permit micro-reproduction, shall be sent as follows:

(1) Original—Agreement Officer.

(2) Copy—Technical Officer

(3) Micro-reproducible copy—NASA Center for Aerospace Information (CASI), Parkway Center, Attn: Document Processing Section, 7121 Standard Drive, Hanover, MD 21076.

(End of provision)

§ 1274.922 Suspension or termination.

Suspension or Termination (XX/XX)

(a) This cooperative agreement may be suspended or terminated in whole or in part by the Recipient or by NASA after consultation with the other party. With prior written notice, NASA may terminate the agreement, for example, if the Recipient is not making anticipated technical progress, if the Recipient materially fails to comply with the terms of the agreement, if the Recipient materially changes the objective of the agreement, or if appropriated funds are not available to support the program.

(b) Upon fifteen (15) days written notice to the other party, either party may temporarily suspend the cooperative agreement, pending corrective action or a decision to terminate the cooperative agreement. The notice should express the reasons why the agreement is being suspended.

(c) In the event of termination by either party, the Recipient shall not be entitled to additional funds or payments except as may be required by the Recipient to meet NASA's share of commitments which had in the judgment of NASA become firm prior to the effective date of termination and are otherwise appropriate. In no event, shall these additional funds or payments exceed the amount of the next payable milestone billing amount.

(End of provision)

§ 1274.923 Equipment and other property.

Equipment and Other Property (XX/XX)

(a) Under no circumstances shall cooperative agreement funds be used to acquire land or any interest therein, to acquire or construct facilities (as defined in 48 CFR (FAR) 45.301), or to procure passenger carrying vehicles.

(b) Contractor acquired equipment or property used in performance of the Cooperative Agreement shall be controlled in accordance with 48 CFR (FAR) 45.6.

(c) The government shall have title to equipment and other personal property acquired with government funds. Such property shall be disposed of pursuant to 48 CFR (FAR) 45.603. The Recipient shall have title to equipment and other personal property acquired with Recipient funds. Such property shall remain with the Recipient at the conclusion of the

cooperative agreement. Under a shared cost arrangement, the Government and the Recipient have joint ownership of acquired property in accordance with the cost share ratio. Jointly owned property shall be disposed of as agreed to by the parties.

(d) Title to Government furnished equipment (including equipment, title to which has been transferred to the Government prior to completion of the work) will remain with the Government.

(e) The Recipient shall establish and maintain property management standards for Government property and otherwise manage such property as set forth in 48 CFR (FAR) 45.5 and 48 CFR (NFS) 1845.5.

(f) Recipients shall submit annually a NASA Form 1018, NASA Property in the Custody of Contractors, in accordance with the instructions on the form, the provisions of 48 CFR (NFS) 1845.71 and any supplemental instructions that may be issued by NASA for the current reporting period. The original NF 1018 shall be submitted to the center Deputy Chief Financial Officer, Finance, with three copies sent concurrently to the center Industrial Property Officer. The annual reporting period shall be from October 1 of each year through September 30 of the following year. The report shall be submitted in time to be received by October 31. Negative reports (i.e. no reportable property) are required. The information contained in the reports is entered into the NASA accounting system to reflect current asset values for agency financial statement purposes. Therefore, it is essential that required reports be received no later than October 31. A final report is required within 30 days after expiration of the agreement.

(g) As of the date of this rewrite, process changes have been made to facilitate electronic submission of NF 1018. Recipients may use the procedures established by NASA Procurement Notice (PN) 97–64, issued on August 9, 2001.

(End of provision)

§ 1274.924 Civil rights.

Civil Rights (XX/XX)

Work on NASA cooperative agreements is subject to the provisions of Title VI of the Civil Rights Act of 1964 (Pub. L. 88–352; 42 U.S.C. 2000d–l), Title IX of the Education Amendments of 1972 (20 U.S.C. 1680 *et seq.*), section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), the Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*), and the NASA implementing regulations (14 CFR Parts 1250, 1251, 1252 and 1253).

(End of provision)

§ 1274.925 Subcontracts.

Subcontracts (XX/XX)

(a) Recipients are not authorized to issue grants or cooperative agreements.

(b) NASA Agreement Officer consent is required for subcontracts over (dollar threshold inserted by Agreement Officer) and/or subcontracts for (critical systems, subsystems, components, or services inserted by Agreement Officer and Cognizant NASA Project Office) _____.

(c) If not submitted by the Recipient and accepted by NASA in the original proposal. The Recipient shall provide the following information to the Agreement Officer:

(1) A copy of the proposed subcontract.

(2) Basis for subcontractor selection.

(3) Justification for lack of competition when competitive bids or offers are not obtained.

(4) Basis for award cost or award price.

(d) The Recipient shall utilize small business, veteran-owned small business, service-disabled veteran-owned small business, historically underutilized small business, small disadvantaged business, women-owned business concerns, Historically Black Colleges and Universities, and minority educational institutions as subcontractors to the maximum extent practicable.

(e) All entities that are involved in performing the research and development effort that is the purpose of the cooperative agreement shall be part of the Recipient's consortium and not subcontractors.

(End of provision)

§ 1274.926 Clean Air-Water Pollution Control Acts.

Clean Air-Water Pollution Control Acts (XX/XX)

If this cooperative agreement or supplement thereto is in excess of $100,000, the Recipient agrees to notify the Agreement Officer promptly of the receipt, whether prior or subsequent to the Recipient's acceptance of this cooperative agreement, of any communication from the Director, Office of Federal Activities, Environmental Protection Agency (EPA), indicating that a facility to be utilized under or in the performance of this cooperative agreement or any subcontract thereunder is under consideration to be listed on the EPA ''List of Violating Facilities'' published pursuant to 40 CFR 15.20. By acceptance of a cooperative agreement in excess of $100,000, the Recipient—

(a) Stipulates that any facility to be utilized thereunder is not listed on the EPA ''List of Violating Facilities'' as of the date of acceptance;

(b) Agrees to comply with all requirements of section 114 of the Clean Air Act, as amended (42 U.S.C. 1857 *et seq.* as amended by Pub. L. 91–604) and section 308 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 *et seq.* as amended by Pub. L. 92–500) relating to inspection, monitoring, entry, reports and information, and all other requirements specified in the aforementioned sections, as well as all regulations and guidelines issued thereunder after award of and applicable to the cooperative agreement; and

(c) Agrees to include the criteria and requirements of this clause in every subcontract hereunder in excess of $100,000, and to take such action as the Contracting or Grant Officer may direct to enforce such criteria and requirements.

(End of provision)

§ 1274.927 Debarment and Suspension and Drug-Free Workplace.

Debarment and Suspension and Drug-Free Workplace (XX/XX)

NASA cooperative agreements are subject to the provisions of 14 CFR part 1265, Government-wide Debarment and Suspension (Nonprocurement) and 14 CFR Part 1267, Government-wide requirements for Drug-Free Workplace, unless excepted by 14 CFR 1265.110 or 1265.610.

(End of provision)

§ 1274.928 Foreign national employee investigative requirements.

Foreign National Employee Investigative Requirements (XX/XX)

(a) The Recipient shall submit a properly executed Name Check Request (NASA Form 531) and a completed applicant fingerprint card (Federal Bureau of Investigation Card FD–258) for each foreign national employee requiring access to a NASA Installation. These documents shall be submitted to the Installation's Security Office at least 75 days prior to the estimated duty date. The NASA Installation Security Office will request a National Agency Check (NAC) for foreign national employees requiring access to NASA facilities. The NASA Form 531 and fingerprint card may be obtained from the NASA Installation Security Office.

(b) The Installation Security Office will request from NASA Headquarters, Code I, approval for each foreign national's access to the Installation prior to providing access to the Installation. If the access approval is obtained from NASA Headquarters prior to completion of the NAC and performance of the cooperative agreement requires a foreign national to be given access immediately, the Technical Officer may submit an escort request to the Installation's Chief of Security.

(End of provision)

§ 1274.929 Restrictions on lobbying.

Restrictions on Lobbying (XX/XX)

This award is subject to the provisions of 14 CFR part 1271 ''New Restrictions on Lobbying.''

(End of provision)

§ 1274.930 Travel and transportation.

Travel and Transportation (XX/XX)

(a) For travel funded by the government under this agreement, section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118)(Fly America Act) requires the Recipient to use U.S.-flag air carriers for international air transportation of personnel and property to the extent that service by those carriers is available.

(b) Department of Transportation regulations, 49 CFR part 173, govern Recipient shipment of hazardous materials and other items.

(End of provision)

§ 1274.931 Electronic funds transfer payment methods.

Electronic Funds Transfer Payment Methods (XX/XX)

Payments under this cooperative agreement will be made by the Government by electronic funds transfer through the Treasury Fedline Payment System (FEDLINE) or the Automated Clearing House (ACH), at the option of the Government. After award, but no later than 14 days before an invoice is submitted, the Recipient shall designate a financial institution for receipt of electronic funds transfer payments, and shall submit this designation to the Agreement Officer or other Government official, as directed.

(a) For payment through FEDLINE, the Recipient shall provide the following information:

(1) Name, address, and telegraphic abbreviation of the financial institution receiving payment.

(2) The American Bankers Association 9-digit identifying number for wire transfers of the financing institution receiving payment if the institution has access to the Federal Reserve Communication System.

(3) Payee's account number at the financial institution where funds are to be transferred.

(4) If the financial institution does not have access to the Federal Reserve Communications System, name, address, and telegraphic abbreviation of the correspondent financial institution through which the financial institution receiving payment obtains wire transfer activity. Provide the telegraphic abbreviation and American Bankers Association identifying number for the correspondent institution.

(b) For payment through ACH, the Recipient shall provide the following information:

(1) Routing transit number of the financial institution receiving payment (same as American Bankers Association identifying number used for FEDLINE).

(2) Number of account to which funds are to be deposited.

(3) Type of depositor account (''C'' for checking, ''S'' for savings).

(4) If the Recipient is a new enrollee to the ACH system, a ''Payment Information Form,'' SF 3881, must be completed before payment can be processed.

(c) In the event the Recipient, during the performance of this cooperative agreement, elects to designate a different financial institution for the receipt of any payment made using electronic funds transfer procedures, notification of such change and the required information specified above must be received by the appropriate Government official 30 days prior to the date such change is to become effective.

(d) The documents furnishing the information required in this clause must be dated and contain the signature, title, and telephone number of the Recipient official authorized to provide it, as well as the Recipient's name and contract number.

(e) Failure to properly designate a financial institution or to provide appropriate payee bank account information may delay payments of amounts otherwise properly due.

(End of provision)

§ 1274.932 Retention and examination of records.

Retention and Examination of Records (XX/XX)

Financial records, supporting documents, statistical records, and all other records (or microfilm copies) pertinent to this cooperative agreement shall be retained for a period of 3 years, except that records for nonexpendable property acquired with cooperative agreement funds shall be retained for 3 years after its final disposition and, if any litigation, claim, or audit is started before the expiration of the 3-year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved. The retention period starts from the date of the submission of the final invoice. The Administrator of NASA and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any pertinent books, documents, papers, and records of the Recipient and of subcontractors to make audits, examinations, excerpts, and transcripts. All provisions of this clause shall apply to any subcontractor performing substantive work under this cooperative agreement.

(End of provision)

§ 1274.933 Summary of Recipient Reporting Responsibilities.

Summary of Recipient Reporting Responsibilities (XX/XX)

This cooperative agreement requires the recipient to submit a number of reports. These reporting requirements are summarized below. In the event of a conflict between this provision and other provisions of the cooperative agreement requiring reporting, the other provisions take precedence.

[The Agreement Officer may add/delete reporting requirements as appropriate.]

Report	Frequency	Reference
Report of Joint NASA/Recipient Inventions.	As required	1274.911 Patent Rights (Paragraph (b)(4)).
Interim Report of Reportable Items.	Every 12 months	1274.912 Patent Rights—Retention by the Recipient (Large Business) (Paragraph (e)(3)(i)).
Final Report of Reportable Items.	3 months after completion	1274.912 Patent Rights—Retention by the Recipient (Large Business) (Paragraph (e)(3)(ii)).
Disclosure of Subject Inventions.	Within 2 months after inventor discloses it to the Recipient.	1274.912 Patent Rights Retention by (Large Recipient Business) (Paragraph (e)(2)) or 1274.913 Patent Rights—Retention by the Recipient (Small Business) (Paragraph (c)(1)).
Election of Title to a Subject Invention.	1 year after disclosure of the subject invention if a statutory bar exists, otherwise within 2 years.	1274.913 Patent Rights—Retention by the Recipient (Small Business) (Paragraph (c)(2)).
Listing of Subject Inventions	Every 12 months from the date of the agreement.	1274.913 Patent Rights—Retention by the Recipient (Small Business) (Paragraph (f)(5)(i)).
Subject Inventions Final Report.	Prior to close-out of the agreement.	1274.913 Retention by the Recipient (Small Business) (Paragraph (f)(5)(ii)).
Notification of Decision to Forego Patent Protection.	30 days before expiration of the response period.	1274.913 Patent Rights—Retention by the Recipient (Small Business) (Paragraph (f)(3)).
Notification of a Subcontract Award.	Promptly upon award of a subcontract.	1274.912 Patent Rights—Retention by the Recipient (Large Business) (Paragraph (g)(3)) or 1274.913 Patent Rights—Retention by the Recipient (Small Business) (Paragraph (g)(3)).
Utilization of Subject Invention.	Annually	1274.913 Patent Rights—Retention by the Recipient (Small Business) (Paragraph (h)).
Notice of Proposed Transfer of Technology.	Prior to transferring technology to foreign firm or institution.	1274.915 Restrictions on Sale or Transfer of Technology to Foreign Firms or institutions (Paragraph (b)).

Report	Frequency	Reference
Progress Report	60 days prior to the anniversary date of the agreement (except final year).	1274.921 Publications and reports: Non-Proprietary Research results (Paragraph (d)(1)).
Summary of Research	90 days after completion of agreement.	1274.921 Publications and Reports: Non-Proprietary Research Results (Paragraph (d)(2)).
NASA Form 1018 Property in the Custody of Contractors.	Annually by October 31	1274.923 Equipment and Other Property (Paragraph (f)).
NASA Form 1018 Property in the Custody of Contractors.	60 days after expiration date of agreement.	1274.923 Equipment and Other Property (Paragraph (f)).

§ 1274.934 Safety.

Safety (XX/XX)

NASA's safety priority is to protect: (1) The public, (2) astronauts and pilots, (3) the NASA workforce (including contractor employees working on NASA contracts), and (4) high-value equipment and property.

(a) The Recipient shall act responsibly in matters of safety and shall take all reasonable safety measures in performing under this cooperative agreement. The recipient shall comply with all applicable federal, state, and local laws relating to safety. The Recipient shall maintain a record of, and will notify the NASA Agreement Officer immediately (within one workday) of any accident involving death, disabling injury or substantial loss of property. The Recipient will immediately (within one workday) advise NASA of hazards that come to its attention as a result of the work performed.

(b) Where the work under this cooperative agreement involves flight hardware, the hazardous aspects, if any, of such hardware will be identified, in writing, by the Recipient. Compliance with this provision by subcontractors shall be the responsibility of the Recipient.

(End of provision)

§ 1274.935 Security classification requirements.

Security Classification Requirements (XX/XX)

Performance under this Cooperative Agreement will involve access to and/or generation of classified information, work in a secure area, or both, up to the level of [insert the applicable security clearance level]. Federal Acquisition Regulation clause 52.204–2 shall apply to this Agreement and DD Form 254, Contract Security Classification Specification Attachment _____ [Insert the attachment number of the DD Form 254].

(End of provision)

§ 1274.936 Breach of safety or security.

Breach of Safety or Security (XX/XX)

Safety is the freedom from those conditions that can cause death, injury, occupational illness, damage to or loss of equipment or property, or damage to the environment. Safety is essential to NASA and is a material part of this contract. NASA's safety priority is to protect: (1) The public; (2) astronauts and pilots; (3) the NASA workforce (including contractor employees working on NASA contracts); and (4) high-value equipment and property. A major breach of safety by the Recipient entitles the Government to remedies (pending corrective measures by the Recipient) which includes, suspension or termination of the Cooperative Agreement, require removal or change of Recipient's personnel from performing under the Agreement. A major breach of safety must be related directly to the work on the Agreement. A major breach of safety is an act or omission of the Recipient that consists of an accident, incident, or exposure resulting in a fatality or mission failure; or in damage to equipment or property equal to or greater than $1 million; or in any ''willful'' or ''repeat'' violation cited by the Occupational Health and Safety Administration (OSHA) or by a state agency operating under an OSHA approved plan.

(a) Security is the condition of safeguarding against espionage, sabotage, crime (including computer crime), or attack. A major breach of security by the Recipient entitles the Government to remedies (pending corrective measures by the Recipient) which includes, suspension or termination of the Cooperative Agreement, require removal or change of Recipient's personnel from performing under the Cooperative Agreement. A major breach of security may occur on or off Government installations, but must be related directly to the work on the Cooperative Agreement. A major breach of security may arise from any of the following: compromise of classified information; illegal technology transfer; workplace violence resulting in criminal conviction; sabotage; compromise or denial of information technology services; damage or loss greater than $250,000 to the Government; or theft.

(b) In the event of a major breach of safety or security, the Recipient shall report the breach to the Agreement Officer. If directed by the Agreement Officer, the Recipient shall conduct its own investigation and report the results to the Government. The Recipient shall cooperate with the Government investigation, if conducted.

(End of provision)

§ 1274.937 Security requirements for unclassified information technology resources.

Security Requirements for Unclassified Information Technology Resources (XX/XX)

(a) The Recipient shall be responsible for Information Technology security for all systems connected to a NASA network or operated by the Recipient for NASA, regardless of location. This provision is applicable to all or any part of the cooperative agreement that includes information technology resources or services in which the Recipient must have physical or electronic access to NASA's sensitive information contained in unclassified systems that directly support the mission of the Agency. This includes information technology, hardware, software, and the management, operation, maintenance, programming, and system administration of computer systems, networks, and telecommunications systems. Examples of tasks that require security provisions include:

(1) Computer control of spacecraft, satellites, or aircraft or their payloads;

(2) Acquisition, transmission or analysis of data owned by NASA with significant replacement cost should the Recipient's copy be corrupted; and

(3) Access to NASA networks or computers at a level beyond that granted the general public, *e.g.* bypassing a firewall.

(b) The Recipient shall provide, implement, and maintain an IT Security Plan. This plan shall describe the processes and procedures that will be followed to ensure appropriate security of IT resources that are developed, processed, or used under this cooperative agreement. The plan shall describe those parts of the cooperative agreement to which this provision applies. The Recipient's IT Security Plan shall be compliant with Federal laws that include, but are not limited to, the Computer Security Act of 1987 (40 U.S.C. 1441 et seq.) and the Government Information Security Reform Act of 2000. The plan shall meet IT security requirements in accordance with Federal and NASA policies and procedures that include, but are not limited to:

(1) OMB Circular A–130, Management of Federal Information Resources, Appendix III, Security of Federal Automated Information Resources;

(2) NASA Procedures and Guidelines (NPG) 2810.1, Security of Information Technology; and

(3) Chapter 3 of NPG 1620.1, NASA Security Procedures and Guidelines.

(c) Within _____ days after cooperative agreement award, the Recipient shall submit for NASA approval an IT Security Plan. This plan must be consistent with and further detail the approach contained in the Recipient's proposal that resulted in the award of this cooperative agreement and in compliance with the requirements stated in this provision. The plan, as approved by the Agreement Officer, shall be incorporated into the cooperative agreement as a compliance document.

(d)(1) Recipient personnel requiring privileged access or limited privileged access to systems operated by the Recipient for NASA or interconnected to a NASA network shall be screened at an appropriate level in accordance with NPG 2810.1, Section 4.5; NPG 1620.1, Chapter 3; and paragraph (d)(2) of this provision. Those Recipient personnel with non-privileged access do not require personnel screening. NASA shall provide screening using standard personnel screening National Agency Check (NAC) forms listed in paragraph (d)(3) of this provision, unless Recipient screening in accordance with paragraph (d)(4) is approved. The Recipient shall submit the required forms to the NASA Center Chief of Security (CCS) within fourteen (14) days after cooperative agreement award or assignment of an individual to a position requiring screening. The forms may be obtained from the CCS. At the option of the government, interim access may be granted pending completion of the NAC.

(2) Guidance for selecting the appropriate level of screening is based on the risk of adverse impact to NASA missions. NASA defines three levels of risk for which screening is required (IT–1 has the highest level of risk):

(i) IT–1—Individuals having privileged access or limited privileged access to systems whose misuse can cause very serious adverse impact to NASA missions. These systems include, for example, those that can transmit commands directly modifying the behavior of spacecraft, satellites or aircraft.

(ii) IT–2—Individuals having privileged access or limited privileged access to systems whose misuse can cause serious adverse impact to NASA missions. These systems include, for example, those that can transmit commands directly modifying the behavior of payloads on spacecraft, satellites or aircraft; and those that contain the primary copy of ''level 1'' data whose cost to replace exceeds one million dollars.

(iii) IT–3—Individuals having privileged access or limited privileged access to systems whose misuse can cause significant adverse impact to NASA missions. These systems include, for example, those that interconnect with a NASA network in a way that exceeds access by the general public, such as bypassing firewalls; and systems operated by the Recipient for NASA whose function or data has substantial cost to replace, even if these systems are not interconnected with a NASA network.

(3) Screening for individuals shall employ forms appropriate for the level of risk as follows:

(i) IT–1: Fingerprint Card (FC) 258 and Standard Form (SF) 85P, Questionnaire for Public Trust Positions (Information regarding financial record, question 22, and the Authorization for Release of Medical Information are not applicable);

(ii) IT–2: FC 258 and SF 85, Questionnaire for Non-Sensitive Positions; and

(iii) IT–3: NASA Form 531, Name Check, and FC 258.

(4) The Agreement Officer may allow the Recipient to conduct its own screening of individuals requiring privileged access or limited privileged access provided the Recipient can demonstrate that the procedures used by the Recipient are equivalent to NASA's personnel screening procedures. As used here, equivalent includes a check for criminal history, as would be conducted by NASA, and completion of a questionnaire covering the same information as would be required by NASA.

(5) Screening of Recipient personnel may be waived by the Agreement Officer for those individuals who have proof of—

(i) Current or recent national security clearances (within last three years);

(ii) Screening conducted by NASA within last three years; or

(iii) Screening conducted by the Recipient, within last three years, that is equivalent to the NASA personnel screening procedures as approved by the Agreement Officer under paragraph (d)(4) of this provision.

(e) The Recipient shall ensure that its employees, in performance of the cooperative agreement, receive annual IT security training in NASA IT Security policies, procedures, computer ethics, and best practices in accordance with NPG 2810.1, Section 4.3 requirements. The Recipient may use web-based training available from NASA to meet this requirement.

(f) The Recipient shall afford NASA, including the Office of Inspector General, access to the Recipient's, subcontractors' or subawardees' facilities, installations, operations, documentation, databases and personnel used in performance of the cooperative agreement. Access shall be provided to the extent required to carry out a program of IT inspection, investigation and audit to safeguard against threats and hazards to the integrity, availability and confidentiality of NASA data or to the function of computer systems operated on behalf of NASA, and to preserve evidence of computer crime.

(g) The Recipient shall incorporate the substance of this clause in all subcontracts or subagreements that meet the conditions in paragraph (a) of this provision.

(End of provision)

§ 1274.938 Modifications.

Modifications (XX/XX)

During the term of this agreement and in the interest of achieving program objectives, the parties may agree to changes that affect the responsibility statements, milestones, or other provisions of this agreement. Any changes to this agreement will be accomplished by a written bilateral modification.

(End of provision)

§ 1274.939 Application of Federal, State, and local laws and regulations.

Application of Federal, State, and Local Laws and Regulations (XX/XX)

(a) Federal Laws and Regulations. This Cooperative Agreement shall be governed by the Federal Laws, regulations, policies, and related administrative practices applicable to this Cooperative Agreement on the date the Agreement is executed. The Recipient understands that such Federal laws, regulations, policies, and related administrative practices may be modified from time to time. The Recipient agrees to consider modifying this Agreement to be governed by those later modified Federal laws, regulations, policies, and related administrative practices that directly affect performance of the Project.

(b) State or Territorial Law and Local Law. Except to the extent that a Federal statute or regulation preempts State or territorial law, nothing in the Cooperative Agreement shall require the Recipient to observe or enforce compliance with any provision thereof, perform any other act, or do any other thing in contravention of any applicable State or territorial law; however, if any of the provisions of the Cooperative Agreement violate any applicable State or territorial law, or if compliance with the provisions of the Agreement would require the Recipient to violate any applicable State or territorial law, the Recipient agrees to notify the Government (NASA) immediately in writing in order that the Government and the Recipient may make appropriate arrangements to proceed with the Project as soon as possible.

(c) Changed Conditions of Performance (Including Litigation). The Recipient agrees to notify the Government (NASA) immediately of any change in State or local law, conditions, or any other event that may significantly affect its ability to perform the Project in accordance with the terms of this Cooperative Agreement. In addition, the Recipient agrees to notify the Government (NASA) immediately of any decision pertaining to the Recipient's conduct of litigation that may affect the Government's interests in the Project or the Government's administration or enforcement of applicable Federal laws or regulations. Before the Recipient may name the Government as a party to litigation for any reason, the Recipient agrees to inform the Government; this proviso applies to any type of litigation whatsoever, in any forum.

(d) No Government Obligations to Third Parties. Absent the Government's express written consent, and notwithstanding any concurrence by the Government in or approval of the award of any Agreement of the Recipient (third party contract) or subcontract of the Recipient (third party subcontract) or the solicitation thereof, the Government shall not be subject to any obligations or liabilities to third party contractors or third party subcontractors or any other person(s).

(End of provision)

§ 1274.940 Changes in recipient's membership.

Changes in Recipient's Membership (XX/XX)

The Recipient shall notify the cognizant Agreement Officer within seven (7) days of any change in the corporate membership (ownership) structure of the Recipient, including the addition or withdrawal of any of the Recipient's affiliated members (e.g., Consortium Member). If NASA reasonably determines that any change in the corporate membership (ownership) of Recipient will conflict with NASA's objectives for the _____ Project or any statutory or regulatory restriction applicable to the agency, NASA may terminate this Agreement after giving the Agreement Recipient at least ninety (90) days prior written notice of such perceived conflict and a reasonable opportunity to cure such conflict.

(End of provision)

§ 1274.941 Insurance and Indemnification.

The following provision is applicable to all cooperative agreements with commercial firms that involve programs or projects that are subject to Section 431 of Public Law 105–276, which addresses insurance for, or indemnification of, developers of experimental aerospace vehicles.

Insurance and Indemnification (XX/XX)

(a) *General.* The Recipient has applied, under the provisions of section 431 of Public Law 105–276 (Section 431), for indemnification by the Government against certain third party damage claims that might arise under the Agreement. Under section 431, a necessary prerequisite to, and consideration for, the Government's granting such indemnification is the Recipient's obtaining insurance against an initial increment of such damages arising from certain third party claims. This provision sets forth the requirements for this insurance prerequisite to a Government grant of indemnification.

(b) *Definitions.* The definitions at 14 CFR part 1266, Cross-Waivers and Indemnification, apply to this provision.

(c) *Insurance.* The Recipient shall obtain, as part of its financial contribution, insurance that meets the following parameters:

(1) The insurance policy or policies shall insure against damages incurred by third parties arising from covered activities;

(2) The amount of insurance applicable to each launch shall be [TBD]. The Government may subsequently increase the amount of insurance the Recipient is required to maintain to qualify for indemnification, for one or more launches, and the Recipient shall pay the additional cost of such increases from its financial contribution; and

(3) The insurance policy or policies shall name the parties and their related entities, and the employees of the parties and their related entities, as named insureds.

Nothing in this provision precludes the Recipient from obtaining, at no cost to the Government, such other insurance as the Recipient determines advisable to protect its business interests.

(d) *Proof of Insurance.* The Recipient shall provide proof of insurance that meets the parameters in paragraph (c) of this provision and that is acceptable to the Agreement Officer:

(1) Within 30/60 days after the execution of the modification adding this provision to the Agreement;

(2) No later than 30 days before each launch; and

(3) Within 7 days after a request by the Agreement Officer.

Moreover, the Recipient shall promptly notify the Agreement Officer of any termination, or of any change to the terms or conditions of an insurance policy or policies for which proof of insurance was provided.

(e) *Notification of Claims.* The Recipient shall—

(1) Promptly notify the Agreement Officer of any third party claim or suit against the Recipient, one of its related entities, any employee of the Recipient or its related entities, or any insurer of the Recipient for damages resulting from covered activities;

(2) Furnish evidence or proof of any such claim, suit or damages, in the form required by NASA; and

(3) Immediately furnish to NASA, or its designee, copies of all information received by the Recipient, or by any related entity, employee or insurer that is pertinent to such claim, suit or damages.

(f) *NASA Concurrence in Settlements.* NASA shall concur or not concur in each settlement of a third party claim by the Recipient's insurer(s). For purposes of determining the amount of indemnification under this cooperative agreement. Adjudicated claims shall be deemed concurred in by NASA.

(End of provision)

§ 1274.942 Export licenses.

Export Licenses (XX/XX)

(a) The Recipient shall comply with all U.S. export control laws and regulations, including the International Traffic in Arms Regulations (ITAR), 22 CFR parts 120 through 130, and the Export Administration Regulations (EAR), 15 CFR parts 730 through 799, in the performance of this Cooperative Agreement. In the absence of available license exemptions/exceptions, the Recipient shall be responsible for obtaining the appropriate licenses or other approvals, if required, for exports of hardware, technical data, and software, or for the provision of technical assistance.

(b) The Recipient shall be responsible for obtaining export licenses, if required, before utilizing foreign persons in the performance of this Cooperative Agreement, including instances where the work is to be performed on-site at [insert name of NASA installation], where the foreign person will have access to export-controlled technical data or software.

(c) The Recipient shall be responsible for all regulatory record keeping requirements associated with the use of licenses and license exemptions/exceptions.

(d) The Recipient shall be responsible for ensuring that the requirements of this provision apply to its subcontractors.

(e) The Recipient may request, in writing, that the Agreement Officer authorize it to export ITAR-controlled technical data (including software) pursuant to the exemption at 22 CFR 125.4(b)(3). The Agreement Officer or designated representative may authorize or direct the use of the exemption where the data does not disclose details of the design, development, production, or manufacture of any defense article.

(End of provision)

Appendix to Part 1274—Listing of Exhibits

Exhibit A to Part 1274—Contract Provisions

All contracts awarded by a recipient, including small purchases, shall contain the following provisions if applicable:

1. Equal Employment Opportunity—All contracts shall contain a provision requiring compliance with E.O. 11246, ''Equal Employment Opportunity,'' as amended by E.O. 11375, ''Amending Executive Order 11246 Relating to Equal Employment Opportunity,'' and as supplemented by regulations at 41 CFR part 60, ''Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.''

2. Copeland ''Anti-Kickback'' Act (18 U.S.C. 874 and 40 U.S.C. 276c)—All contracts in excess of $50,000 for construction or repair awarded by Recipients and subrecipients shall include a provision for compliance with the Copeland ''Anti-Kickback'' Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, ''Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States''). The Act provides that each recipient or subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to NASA.

3. Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333)—Where applicable, all contracts awarded by recipients in excess of $2,000 for construction contracts and in excess of $50,000 for other contracts, other than contracts for commercial items, that involve the employment of mechanics or laborers shall include a provision for compliance with sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Subsection 102 of the Act, each recipient shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work

in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

4. Rights to Inventions Made Under a Contract or Agreement—Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the Recipient in any resulting invention in accordance with 37 CFR part 401, ''Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,'' and any implementing regulations issued by the awarding agency.

5. Clean Air Act (42 U.S.C. 7401 *et seq.*) and the Federal Water Pollution Control Act (33 U.S.C. 1251 *et seq.*), as amended—Contracts, other than contracts for commercial items, of amounts in excess of $100,000 shall contain a provision that requires the Recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 *et seq.*) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 *et seq.*). Violations shall be reported to NASA and the Regional Office of the Environmental Protection Agency (EPA).

6. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors who apply or bid for an award of $100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the Recipient.

7. Debarment and Suspension (E.O.s 12549 and 12689)—No contract shall be made to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with E.O.s 12549 and 12689, ''Debarment and Suspension.'' This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549. Contractors with awards that exceed the small purchase threshold shall provide the required certification regarding its exclusion status and that of its principal employees.

Exhibit B to Part 1274—Reports

1. Individual Procurement Action Report (NASA Form 507)

The Agreement Officer is responsible for submitting NASA Form 507 for all cooperative agreement actions.

2. Property Reporting

As provided in paragraph (f) of § 1274.923, an annual NASA Form (NF) 1018, NASA Property in the Custody of Contractors, will be submitted by October 31 of each year. Negative annual reports are required. A final report is required within 30 days after expiration of the agreement (also see paragraph (g) of § 1274.923 for electronic submission guidance).

3. Disclosure of Lobbying Activities (SFLLL)

(a) Agreement Officers shall provide one copy of each SF LLL furnished under 14 CFR 1271.110 to the Procurement Officer for transmittal to the Director, Analysis Division (Code HC).

(b) Suspected violations of the statutory prohibitions implemented by 14 CFR part 1271 shall be reported to the Director, Contract Management Division (Code HK).

[FR Doc. 01–26622 Filed 10–26–01; 8:45 am]

BILLING CODE 7510–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 648

[Docket No. 011005245–1245–01; I.D. 092401C]

RIN 0648–AP37

Fisheries of the Northeastern United States; Atlantic Herring Fishery

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

ACTION: Proposed 2002 specifications for the Atlantic herring fishery; request for comments.

SUMMARY: NMFS proposes specifications for the 2002 Atlantic herring fishery. The regulations for the Atlantic herring fishery require NMFS to publish specifications for the upcoming year and to provide an opportunity for public comment. The intent of the specifications is to conserve and manage the herring resource and provide for sustainable fisheries. This rule would also correct and clarify the final rule implementing the Atlantic Herring Fishery Management Plan (FMP) by clarifying the vessel owners' or operators' reporting requirements.

DATES: Comments must be received no later than 5 p.m., Eastern Standard Time, on November 28, 2001.

ADDRESSES: Copies of supporting documents, including the Environmental Assessment, Regulatory Impact Review, Initial Regulatory Flexibility Analysis (EA/RIR/IRFA), Essential Fish Habitat Assessment, and the Stock Assessment and Fishery Evaluation (SAFE) Report for the 2000 Atlantic Herring Fishing Year are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. Comments may also be sent via fax to (978) 465–0492. The EA/RIR/IRFA is accessible via the Internet at *http://www.nefmc.org.*

Written comments on the proposed specifications should be sent to the Regional Administrator at the above address. Mark on the outside of the envelope: ''Comments—2002 Herring Specifications.'' Comments may also be sent via facsimile (fax) to (978) 281–9371. Comments will not be accepted if submitted via e-mail or the Internet.

Written comments regarding the collection-of-information requirements contained in this final rule should be sent to the Regional Administrator and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attn: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Myles Raizin, Fishery Policy Analyst, (978) 281–9104, e-mail at myles.raizin@noaa.gov, fax at (978) 281–9135.

SUPPLEMENTARY INFORMATION: Regulations implementing the FMP require the New England Fishery Management Council's (Council) Atlantic Herring Plan Development Team (PDT) to meet at least annually, no later than July each year, with the Atlantic States Marine Fisheries Commission's (Commission) Atlantic Herring Plan Review Team (PRT) to develop and recommend the following specifications for consideration by the Council's Atlantic Herring Oversight Committee: Allowable biological catch (ABC), optimum yield (OY), domestic annual harvest (DAH), domestic annual processing (DAP), total foreign processing (JVPt), joint venture processing (JVP), internal waters processing (IWP), U.S. at-sea processing (USAP), border transfer (BT), total allowable level of foreign fishing (TALFF), and reserve (if any). The PDT and PRT also recommend the total allowable catch (TAC) for each management area and sub-area identified in the FMP. As the basis for its recommendations, the PDT reviews available data pertaining to: Commercial and recreational catch; current estimates of fishing mortality; stock status; recent estimates of recruitment; virtual population analysis results and other estimates of stock size; sea sampling and

trawl survey data or, if sea sampling data are unavailable, length frequency information from trawl surveys; impact of other fisheries on herring mortality; and any other relevant information. Recommended specifications are presented to the Council for adoption and recommendation to NMFS.

Proposed 2002 Specifications

The Council, at its June 2001 meeting, adopted recommendations for the 2002 specifications for the Atlantic herring fishery (see Table 1). The only change from the 2001 specifications was the recommended increase in estimated DAH/DAP by 5,000 mt, and the resulting decrease in TALFF to zero. Although the specification for JVP would remain unchanged from the 2001 allocation, the Council has recommended that harvest of herring under the JVP specification be limited to Management Area 2 (Area 2), rather than both Areas 2 and 3, as specified in 2001. Based on the Council's recommendations, NMFS proposes the specifications and Area TACs contained below in Table 1.

Table 1.

SPECIFICATIONS AND AREA TACS FOR THE 2002 ATLANTIC HERRING FISHERY

Specification	Proposed Allocation (mt)
ABC	300,000
OY	250,000
DAH	250,000
DAP	226,000
JVPt	20,000
JVP	10,000 (Area 2 only)
IWP	10,000
USAP	20,000
BT	4,000
TALFF	0
Reserve	0
TAC – Area 1A	60,000
TAC – Area 1B	10,000
TAC – Area 2	50,000 (TAC reserve: 80,000
TAC – Area 3	50,000

TALFF

Recent growth in domestic utilization, as evidenced by new domestic processing capabilities, has already resulted in an increase in domestic harvesting. The increase in the domestic harvest, and future anticipated increases, resulted in the Council's recommendation for zero TALFF. The Council believes that setting TALFF at zero will further promote domestic interests in the utilization of the herring resource by providing industry with the means to continue development of additional markets.

The 2001 specifications for the Atlantic herring fishery included a small allocation for TALFF. At the time the Council made that recommendation, it was expected that the allocation of TALFF would enhance the probability that foreign vessels would engage in JVP, thus benefitting U.S. fishermen who have historically had difficulty in procuring markets for herring. The Council believed that growth in domestic utilization was inhibited by the lack of new markets, as evidenced by the lack of new processing capabilities. However, for the 2002 fishery, the Council recommended, and NMFS proposes, that setting the TALFF at zero will promote the continued growth in the domestic utilization of the herring resource. The expansion of existing processing capabilities and the opening of new domestic processor/freezer capacity suggest that domestic facilities are able to provide continued expansion in the domestic fishery, thus eliminating the allocation for directed foreign fishing. In addition, the Council recommended zero TALFF because it believed that the allocation of TALFF in 2001 damaged the working relationship between the U.S. and Canada on transboundary fishery issues.

JVP

Under the Atlantic Herring FMP, joint venture activities are allowed in all management areas, subject to an annual review process. In addition, these activities may be specified by management area. The annual review and management area allocation scheme provides the Council with the ability to consider the impact of JVP on shoreside processors. For fishing year 2001, joint ventures between domestic fishing vessels and foreign at-sea processing vessels could occur in Areas 2 and 3. However, for the 2002 specifications, the Council considered public comment and voted to recommend that such activities be limited to Area 2 only because it felt that Area 3 represents the best alternative fishing area for domestic vessels supplying shoreside domestic processors, especially when Area 1A is closed to fishing under existing state and Federal regulations. In addition, as noted in the annual Stock Assessment and Fishery Evaluation (SAFE) Report, shoreside demand is projected to increase in the near term as a result of expanded cannery production and the start-up of a freezer plant in Gloucester, MA. Area 3 represents the best opportunity for growth in the domestic harvesting sector to meet increasing demand for herring by shoreside processors. To allow JVP in Area 3 may hinder the ability of harvesters to adequately supply shoreside processors.

This rule also proposes a technical change to § 648.7 (b)(1)(iii)(B) to clarify the Council's intent concerning the reporting requirements for owners or operators of vessels who have been issued Atlantic herring permits but who are not required to have a Vessel Monitoring System (VMS) unit on board the vessel. This rule would clarify that only owners or operators of vessels that catch 2,000 lb (907.2 kg) or more of Atlantic herring on any one trip in a week must submit an Atlantic herring catch report via the Interactive Voice Response (IVR) reporting system by Tuesday of the following week. Even if the herring has not yet been landed, the operator must estimate the amount of herring on board the vessel and report that amount via the IVR system. As currently written, the regulations imply that this provision applies at all times to any owner or operator of a vessel issued a Federal permit for Atlantic herring who is not required to have a VMS unit on board the vessel. In addition, this rule would also clarify that owners or operators of vessels that catch 2,000 lb (907.2 kg) or more of Atlantic herring, some or all of which is caught in or from the EEZ, on any trip in a week, must submit an Atlantic herring catch report via the IVR system for that week. As currently written, the regulations require that the reporting provision also applies at all times to vessels catching herring in or from the EEZ. A review of the FMP and background material germane to the issue shows that this clarifying change is consistent with Council intent.

Classification

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

The Council and NMFS prepared an Initial Regulatory Flexibility Act analysis that describes the economic impact that this proposed rule, if adopted, would have on small entities. A summary of the analysis follows:

A description of the reasons why action by NMFS is being considered and the objectives of this proposed rule are explained in the preamble to this rule and are not repeated here. This action does not contain any additional collection-of-information, reporting, or recordkeeping requirements. It will not duplicate, overlap, or conflict with any other Federal rules.

All of the affected businesses (fishing vessels and dealers) are considered small entities. These entities qualify as small entities under the standards described in NMFS guidelines because

they have profits that do not exceed $3 million annually. The last full year of data available for the herring fishery is the year 2000. There were 169 vessels, 6 processors, and 104 dealers participating in the fishery in 2000. Given that vessels caught less than half the current OY in 2000, the proposed status quo OY is not likely to result in any significant impact on the revenues of vessels, producer surplus or consumer surplus.

For the 2001 fishery, the Council recommended 5,000 mt of TALFF and 10,000 mt of JVPt. As part of its justification, the Council noted that if foreign vessels availed themselves of the opportunity to harvest some or all of the TALFF specification, and if those vessels are obligated to engage in JVP ventures with U.S. fishing vessels, there would be a positive impact on the revenues of those U.S. vessels participating in JVP ventures. Such economic benefits of TALFF would be indirect, since only the JVP portion of the venture would produce revenues for U.S. vessels. However, the indirect benefit of TALFF would be offset by the negative indirect impact such activity might have on the competitiveness of U.S.-exported herring on world markets.

The proposed 2002 specifications contain the same JVP specification as the 2000 fishery; hence, they have the same potential revenue impact. As noted above, TALFF itself does not directly generate any revenues to U.S. vessels. At an estimated value of $120/ton to the vessel, full utilization of the JVP would result in total revenues of $1.2 million. This would represent an increase in overall fleet revenues of 10 percent, although this is an optimistic projection, since the price paid for herring under joint ventures is generally slightly less than the average price paid by shoreside processors and dealers for non-joint venture herring.

The Council considered other options for TALFF, ranging up to 20,000 mt and JVP ranging up to 40,000 mt. In all cases, they assumed that the JVP specifications would be twice as much as the TALFF allocation. The highest TALFF level considered (20,000 mt) would increase potential revenues to U.S. vessels by as much as four times (at 40,000 mt of JVP), or up to $4.8 million, if all of the JVP specification were utilized. However, the Council concluded that if U.S.-processed herring could be sold into global markets, the economic benefits could be greater than the benefits derived from TALFF and TALFF-enhanced JVP. The Council further noted that U.S. exports of herring are minimal, with the frozen bait market in Canada being the major market. Herring caught directly by foreign vessels could compete in this market and negatively impact revenues to U.S. exporters. Eliminating TALFF would reduce foreign competition and increase the chances for U.S. market expansion, benefitting both U.S. processors and U.S. vessels delivering herring shoreside. The Council expects that, if global markets will purchase U.S. herring, the economic benefits would be far greater if those fish are processed and exported by U.S. companies, rather than by foreign ventures. Eliminating TALFF will reduce foreign competition and increase the chances for market penetration by U.S. exporters and, therefore, increase overall economic benefits through both value-added production and overall market expansion.

This action clarifies a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by OMB under control number 0648–0212. Public reporting burden for this collection of information is estimated to average 4 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC. 20503 (Attention: NOAA Desk Officer).

Notwithstanding any other provision of the 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 requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

Dated: October 23, 2001.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be 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 § 648.7, paragraph (b)(1)(iii)(B) is revised, paragraph (b)(1)(iii)(C) is redesignated as paragraph (b)(1)(iii)(D), and a new paragraph (b)(1)(iii)(C) is added to read as follows:

§ 648.7 Recordkeeping and reporting requirements.

* * * * *

(b) * * *

(1) * * *

(iii) * * *

(B) An owner or operator of any vessel issued a permit for Atlantic herring that is not required by § 648.205 to have a VMS unit on board and that catches ≥ 2,000 lb (907.2 kg) of Atlantic herring on any trip in a week must submit an Atlantic herring catch report via the IVR system for that week as required by the Regional Administrator.

(C) An owner or operator of any vessel that catches ≥ 2,000 lb (907.2 kg) of Atlantic herring, some or all of which is caught in or from the EEZ, on any trip in a week, must submit an Atlantic herring catch report via the IVR system for that week as required by the Regional Administrator.

* * * * *

[FR Doc. 01–27168 Filed 10–26–01; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 66, No. 209
Monday, October 29, 2001

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Request for Extension of Currently Approved Information Collection

AGENCY: Farm Service Agency, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intent of the Farm Service Agency (FSA) to request an extension of a currently approved information collection used in support of the FSA Farm Loan Programs (FLP). This renewal does not involve any revisions to the program rules.

DATES: Comments on this notice must be received on or before December 28, 2001 to be assured consideration.

FOR FURTHER INFORMATION CONTACT: Michael Cumpton, USDA, Farm Service Agency, Loan Servicing and Property Management Division, 1400 Independence Avenue, SW, STOP 0523, Washington, DC 20250–0523; Telephone (202) 690–4014; Electronic mail: *mike_cumpton@wdc.usda.gov*.

SUPPLEMENTARY INFORMATION:

Title: 7 CFR 1951-L, Servicing Cases Where Unauthorized Loan or Other Assistance Was Received.

OMB Control Number: 0560–0160.

Expiration Date: December 31, 2001.

Type of Request: Extension of Currently Approved Information Collection.

Abstract: FSA encounters cases where unauthorized assistance was received by a borrower. This assistance may be a loan where the borrower did not meet the eligibility requirements contained in statute or program regulations or where the borrower was eligible for loan assistance but a lower subsidized interest rate was charged on the loan, resulting in the borrower's receipt of unauthorized interest subsidy benefits. The unauthorized assistance may also be in the form of loan servicing where a borrower received an excessive or unauthorized write-down or write-off of their debt. The information collected under this regulation is provided on a voluntary basis by the borrower, although failure to cooperate to correct loan accounts may result in liquidation of the loan. The information to be collected will primarily be financial data such as amount of income, farm operating expenses, depreciation, crop yields, etc.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 4 hours per response.

Respondents: Individuals or households, businesses or other for profit and farms.

Estimated Number of Respondents: 200.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 800 hours.

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 will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. These comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to Michael Cumpton, Senior Loan Officer, USDA, FSA, Farm Loan Programs, Loan Servicing Division, 1400 Independence Avenue, SW, STOP 0523, Washington, DC 20250–0523.

Comments will be summarized and included in the request for OMB approval of the information collection. All comments will also become a matter of public record.

Signed in Washington, DC, on October 18, 2001.

James R. Little,

Acting Administrator, Farm Service Agency.

[FR Doc. 01–27073 Filed 10–26–01; 8:45 am]

BILLING CODE 3410–05–P

AMTRAK REFORM COUNCIL

Notice of Meeting

AGENCY: Amtrak Reform Council.

ACTION: Notice of special public business meeting in Washington, DC.

SUMMARY: As provided in section 203 of the Amtrak Reform and Accountability Act of 1997 (Reform Act), the Amtrak Reform Council (Council) gives notice of a special public meeting of the Council. On Friday, November 9, 2001, the Council will hold a Business Meeting from 10 a.m.–4 p.m. Eastern Standard Time (EST) during which time the Council members will discuss, among other issues, Amtrak's financial performance for FY 2001, the impact of the events of September 11th on Amtrak's ridership and financial performance, and their views on whether Amtrak is likely to meet the statutory self-sufficiency requirement set forth in section 204 of the Amtrak Reform and Accountability Act of 1997 (Reform Act).

DATES: The Business Meeting will be held on Friday, November 9, 2001, from 10 a.m.–4 p.m. EST. The event is open to the public.

ADDRESSES: The Business Meeting will take place in room 2230, US DOT Headquarters, (the Nassif Building), 400 7th Street, SW., Washington, DC 20590. Persons in need of special arrangements should contact the person listed below.

FOR FURTHER INFORMATION CONTACT: Deirdre O'Sullivan, Amtrak Reform Council, Room 7105, JM–ARC, 400 Seventh Street, SW., Washington, DC 20590, or by telephone at (202) 366–0591; FAX: 202–493–2061. For information regarding ARC's upcoming events, the agenda for meetings, the ARC's Second Annual Report, information about ARC Council Members and staff, and much more, you can also visit the Council's website at www.amtrakreformcouncil.gov.

SUPPLEMENTARY INFORMATION: The ARC was created by the Amtrak Reform and Accountability Act of 1997 (Reform

Act), as an independent commission, to evaluate Amtrak's performance and to make recommendations to Amtrak for achieving further cost containment, productivity improvements, and financial reforms. In addition, the Reform Act provides: that the Council is to monitor cost savings from work rules established under new agreements between Amtrak and its labor unions; that the Council submit an annual report to Congress that includes an assessment of Amtrak's progress on the resolution of productivity issues; and that, after a specified period, the Council has the authority to determine whether Amtrak can meet certain financial goals specified under the Reform Act and, if it finds that Amtrak cannot, to notify the President and the Congress.

The Reform Act prescribes that the Council is to consist of eleven members, including the Secretary of Transportation and ten others nominated by the President and the leadership of the Congress. Members serve a five-year term.

Issued in Washington, DC on October 23, 2001.

Thomas A. Till,

Executive Director.

[FR Doc. 01–27092 Filed 10–25–01; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, Commerce.

ACTION: To give firms an opportunity to comment.

Petitions Have Been Accepted for Filing on the Dates Indicated From the Firms Listed Below

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD 9/14/00–10/19/01

Firm name	Address	Date petition accepted	Product
Matrix Tool, Inc	4976 Franklin Avenue, Fairview, PA 16415.	09/17/01	Plastic molds and plastic molded components including electical connectors for automobiles and telecommunication equipment.
Vermont Honeylights, Inc	394 Rockydale Road, Bristol, VT 05443.	09/17/01	Hand-rolled and molded beeswax candles and molded wax statuary and home decorations.
H. R. Simon Co., Inc	3515 Marmenco Court, Baltimore, MD 21230.	09/19/01	X-ray chemicals for the developing process used in the medical industry.
Eagle Bronze, Inc	130 Poppy Street, Lander, WY 82520	09/21/01	Bronze sculptures.
Micropulse, Inc	5865 E. State Road, Columbia City, IN 46725.	09/21/01	Automated manufacturing machinery.
Valbert Corporation	19300 144th Ave., N.E., Woodinville, WA 98072.	09/27/01	Instrument control panels, wire harnesses, electronic programmable controllers and other control systems for various industries.
Consolidated Steel Services, Inc	P.O. Box 369, Cresson, PA 16630	09/27/01	Railroad tracks fixtures and parts.
Orion Healthcare Technology, Inc	1823 Harney Street, Omaha, NE 68102.	09/27/01	Software to reduce medical errors and provide assessments to addiction sciences.
Intermix Distributors, Inc	1133 Barranca Drive, El Paso, TX 79935.	09/28/01	Tortillas, chorizo and barbacoa.
Circuit Services, Inc	27–24th Street, Kenner, LA 70062	09/28/01	Printed circuits.
Associated Plastics Corporation	502 Eric Wolbur Avenue, Ada, Ohio 45180.	09/28/01	Injection molded plastic components.
Magdesian Brothers, Inc	730 Fifth Avenue, Industry, CA 91746.	09/28/01	Women's shoes primarily of leather.
Moore Industries International, Inc	16650 Schoenborn Street, Sepulveda, CA 91343.	09/28/01	Electronic instrumentation used to monitor and control industrial processes.
Signup, Inc dba Multimedia	3300 Monier Circle, Rancho Cordova, CA 95742.	09/28/01	Electronic signage.
Powis-Parker, Inc	775 Heinz Avenue, Berkeley, CA 94710.	09/28/01	Binding machines and accessories i.e., covers, ink, strips and glue.
Trailer Equipment Manufacturing Co., Inc.	1326 East Street, Minden, LA 71055	10/10/01	Trailer jacks.
Helio Precision Products	601 N. Skokie Highway, Lake Bluff, IL 60044.	10/10/01	Valve guides, shafts and transmissions for diesel engines.
Cheraw Yarn Mill, Inc	U.S. Highway 1 South, Cheraw, SC 29520.	10/10/01	Cotton yarn for the apparel.
Standard Fusee Corp. d.b.a. Orion Safety Products.	28320 St. Michaels Rd., Easton, MD 21601.	10/11/01	Flares for the transportation industry.
Leedon Webbing Co., Inc	86 Tremont Street, Central Falls, RI 02863.	10/16/01	Narrow fabric webbing used in apparel and accessories, sporting goods and various industrial uses.
Chardan Corporation	9610 County Road 14, Wauseon, OH 43567.	10/16/01	Molded cross linked polyethylene foam padding for use in the athletic, industrial hospital, automative office supply and toy industries.
Nuvonyx, Ind.	3753 Pennridge Drive, Bridgeton, MO 63044.	10/17/01	Robotic direct laser welding systems.
HTM USA Holdings, Inc d.b.a. Penn Racquet Sports.	306 45th Avenue, Phoenix, AZ 85043	10/18/01	Tennis balls.
Chace Leather Products, Inc	507 Alden Street, Falls River, MA 02722.	10/18/01	Leather, simulated leather and nylon goods.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD 9/14/00–10/19/01—Continued

Firm name	Address	Date petition accepted	Product
Miss Beckey Seafood, Inc, d.b.a. Safe Harbor Seafood.	4371 Ocean Street, Mayport, FL 32233.	10/19/01	Shrimp, fish and other seafood.

The petitions were submitted pursuant to section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by Trade Adjustment Assistance, Room 7315, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: October 23, 2001.

Anthony J. Meyer,

Coordinator, Trade Adjustment and Technical Assistance.

[FR Doc. 01–27097 Filed 10–26–01; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–803]

Heavy Forged Hand Tools From the People's Republic of China: Final Results of New Shipper Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results in the antidumping duty new shipper administrative review of heavy forged hand tools from the People's Republic of China.

SUMMARY: On August 1, 2001, the Department of Commerce (Department) published the preliminary results of the new shipper review of the antidumping duty order on hammers/sledges, one of the four antidumping duty orders on heavy forged hand tools (HFHTs) from the People's Republic of China (PRC). This review covers one manufacturer/exporter. The period of review (POR) is February 1, 2000 through July 31, 2000.

Based on our analysis of the comments received, we have made changes to the margin calculation. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margin for the reviewed firm is listed below in the section entitled *Final Results of Review.*

EFFECTIVE DATE: October 29, 2001.

FOR FURTHER INFORMATION CONTACT: Esther Chen, Tom Martin, or Ron Trentham, AD/CVD Enforcement Group II, Office 4, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–2305, (202) 482–3936 and (202) 482–6320, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930 (Act) are references to the provisions as of January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR part 351 (2000).

Background

The Department published in the **Federal Register** the antidumping duty orders on HFHTs from the PRC on February 19, 1991. *See Antidumping Duty Orders: Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China,* 56 FR 6622 (February 19, 1991). On July 20, 2000, the Department received a request from Shandong Jinma Industrial Group Co., Ltd. (Jinma) for a new shipper review of the antidumping duty order on HFHTs covering hammers/sledges pursuant to section 751(a)(2)(B) of the Act and section 351.214(b) of the Department's regulations. These provisions state that, if the Department receives from an exporter or producer of the subject merchandise a request for review, which states that it did not export the merchandise to the United States during the period covered by the original less-than-fair-value (LTFV) investigation and that such exporter or producer is not affiliated with any exporter or producer who exported the subject merchandise during that period, then the Department shall conduct a new shipper review to establish an individual weighted-average dumping margin for the requesting exporter or producer, if the Department has not previously established such a margin for the exporter or producer. The regulations require the exporter or producer to include in its request: (1) Documentation establishing the date on which the merchandise was first entered, or withdrawn from the warehouse, for consumption, or, if it cannot establish the date of the first entry, the date on which it first shipped the merchandise for export to the United States, or if the merchandise has not yet been shipped or entered, the date of sale; (2) a list, with appropriate certifications, of the firms with which it is affiliated; (3) a certification from such exporter or producer, and from each affiliated firm, that they did not, under their current or former names, export the merchandise during the LTFV period of investigation (POI), and (4) in an antidumping proceeding involving inputs from a nonmarket economy country, a certification that the export activities of such exporter or producer are not controlled by the central government. *See* 19 CFR 351.214(b)(2)(ii), (iii), and (iv); Statement of Administrative Action (SAA) Accompanying the URAA, H.R. Doc. No. 103–316, vol. 1 (1994) at 875.

Jinma's request was accompanied by information and certifications establishing the date on which it first shipped the subject merchandise. Jinma also claimed it had no affiliated companies which exported hammers/sledges from the PRC during the POI. In addition, Jinma certified that its export activities are not controlled by the central government. Based on the above information, the Department initiated a

new shipper review covering Jinma. *See Heavy Forged Hand Tools From the People's Republic of China; Initiation of New Shipper Antidumping Administrative Review,* 65 FR 59824 (October 6, 2000). On March 26, 2001, the Department published an extension of the deadline for completion of the preliminary results of this new shipper review until July 25, 2001. *See Notice of Extension of Time Limit for Preliminary Results of New Shipper Antidumping Review: Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China,* 66 FR 16444 (March 26, 2001).

On August 1, 2001, the Department published the preliminary results of the new shipper review of Jinma with respect to the antidumping duty order on hammers/sledges from the PRC. *See Notice of Preliminary Results of Antidumping Duty New Shipper Review: Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China*, 66 FR 39733 (August 1, 2001). We invited interested parties to comment on the preliminary results of this review. On September 4, 2001, we received comments from the respondent Jinma. No rebuttal comments were received. The Department has now completed this new shipper review in accordance with section 751 of the Act.

Scope of Review

HFHTs from the PRC comprise the following classes or kinds of merchandise: (1) Hammers and sledges with heads over 1.5 kg (3.33 pounds) (hammers/sledges); (2) bars over 18 inches in length, track tools and wedges (bars/wedges); (3) picks/mattocks; and (4) axes/adzes. This review covers shipments of one class or kind of merchandise, hammers and sledges with heads over 1.5 kg (3.33 pounds).

HFHTs include heads for drilling, hammers, sledges, axes, mauls, picks, and mattocks, which may or may not be painted, which may or may not be finished, or which may or may not be imported with handles; assorted bar products and track tools including wrecking bars, digging bars and tampers; and steel wood splitting wedges. HFHTs are manufactured through a hot forge operation in which steel is sheared to required length, heated to forging temperature, and formed to final shape on forging equipment using dies specific to the desired product shape and size. Depending on the product, finishing operations may include shot-blasting, grinding, polishing and painting, and the insertion of handles for handled products. HFHTs are currently classifiable under the following Harmonized Tariff Schedule (HTS) subheadings: 8205.20.60, 8205.59.30, 8201.30.00, and 8201.40.60. Specifically excluded are hammers and sledges with heads 1.5 kg (3.33 pounds) in weight and under, hoes and rakes, and bars 18 inches in length and under. Although the HTS subheadings are provided for convenience and Customs purposes, our written description of the scope of these orders is dispositive. This review covers the period February 1, 2000 through July 31, 2000.

Analysis of Comments Received

All issues raised in the briefs submitted by parties to this new shipper administrative review are addressed in the Issues and Decision Memorandum for the New Shipper Review of Heavy Forged Hand Tools from the People's Republic of China—February 1, 2000 through July 31, 2000 from Bernard T. Carreau, Deputy Assistant Secretary, Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration (Decision Memorandum), dated concurrently with the review results and hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memorandum, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding Department positions in this public memorandum, which is on file at the U.S. Department of Commerce, in the Central Records Unit, room B–099. In addition, a complete version of the Decision Memorandum is accessible on the web at *http://ia.ita.doc.gov/frn.* The paper copy and electronic version of the Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made the following changes to the margin calculation:

1. For the surrogate value of wooden tool handles, the Department used Indian import data for HTS category 4417 during the period, April 1999 through February 2000. *See* Comment 1 of the Decision Memorandum.

2. For the surrogate value of electricity, the Department used an Indian electricity surrogate value obtained from the *Energy Data Directory & Yearbook 1999–2000 (TEDDY). See* Comment 2 of the Decision Memorandum

3. In calculating surrogate values for the factors of production for HFHTs, the Department included all imports of inputs weighing under 100 kilograms unless the quantity or value was found to be aberrational. *See* Memorandum From Jeff Pedersen Regarding Factors of Production Valuation/Analysis Memorandum for the Final Results of the New Shipper Review of Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles (HFHTs), from the People's Republic of China (PRC) Shandong Jinma Industrial Group Co., Ltd. (Jinma) (Analysis Memorandum).

Final Results of Review

We determine that the following weighted-average margin percentage exists for the period February 1, 2000 through July 31, 2000:

Manufacturer/exporter	Time period	Margin (percent)
Shandong Jinma Industrial Group Co., Ltd.: Hammers/Sledges	2/1/00–7/31/00	0.00

Assessment

The Department shall determine, and the U.S. Customs Service (Customs) shall assess, antidumping duties on all appropriate entries. While Jinma's calculated dumping margin is 0 percent, we have calculated importer-specific assessments for Jinma's sales to the United States. Where the importer-specific assessment rate is above de minimis, we will instruct Customs to assess dumping duties on that importer's entries of subject merchandise.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of the new shipper administrative review for all shipments of hammers/sledges from the PRC entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a) of the Act: (1) For the exporter named above, no cash deposit will be required; (2) the cash deposit

rate for PRC exporters who received a separate rate in a prior segment of the proceeding will continue to be the rate assigned in the most recent segment of the proceeding during which they were reviewed; (3) the cash deposit rate for the PRC-wide entity (i.e., all other exporters, which have not been reviewed) will continue to be 27.71 percent; and (4) the cash deposit rate for non-PRC exporters of subject merchandise from the PRC will be the rate applicable to the PRC supplier of that exporter.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Notification

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and in the subsequent assessment of doubled antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO material or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanctions.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: October 23, 2001.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

Appendix—Issues in Decision Memorandum

Comments and Responses

1. Excluding aberrational data from the Indian import data used in valuing wooden tool handles
2. Use of *TEDDY* for Indian electricity surrogate values

[FR Doc. 01–27165 Filed 10–26–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board (DSB) Task Force on Aircraft Carriers of the Future will meet in closed session on October 22–23, 2001; November 5–7, 2001; November 15–16, 2001; December 11–12, 2001; January 16–17, 2001; February 21–22, 2002; and March 13–14, 2002. All meetings will be held at Strategic Analysis Inc., 3601 Wilson Boulevard, Arlington, VA 22201, with the exception of the November 5–7 and November 15–16 meetings, which will be held in San Diego, CA. The Task Force will assess how aircraft carriers should serve the nation's defense needs in the 21st Century and beyond.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Task Force will examine the expected naval environment and the role of the Navy for the next 20–50 years; the role of the carrier and the carrier battle group in a joint environment in which technology has progressed at an appropriate pace for both the U.S. and its potential adversaries; the effects of Unmanned Combat Air Vehicles on the role of the carrier and the carrier battle group; how the carrier should evolve or be transformed to best meet mission requirements in a joint environment; how the role of the aircraft carrier might change and the characteristics that might affect the change; and the technology improvement barriers that need to be overcome to significantly improve the ability of the carrier to execute its missions.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II), it has been determined that these DSB Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1), and that accordingly these meetings will be closed to the public.

Dated: October 23, 2001.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01–27064 Filed 10–26–01; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Acting 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 December 28, 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 Acting 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: October 23, 2001.

William Burrow,

Acting Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Revision of a currently approved collection.

Title: The Evaluation of Exchange, Language, International and Area Studies (EELIAS), NRC, FLAS and IIPP, UISFUL, Business and International Education Program (BIE), Centers for International Business Education Program (CIBE) and American Overseas Research Centers (AORC) (JS).

Frequency: Annually.

Affected Public: Not-for-profit institutions (primary).

Reporting and Recordkeeping Hour Burden:

Responses: 60;

Burden Hours: 2100.

Abstract: BIE, CIBE and AORC are being added for clearance to the system that already contains four other programs. Information collection assist IEGPS in meeting program planning and evaluation requirements. Program officers require performance information to justify continuation funding, and grantees use this information for self evaluations and to request continuation funding from the Department of Education.

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 Joe Schubart at (202) 708–9266. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Office of Educational Research and Improvement

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Title: Baccalaureate and Beyond Longitudinal Study, Third Followup (B&B:93/2003).

Frequency: On occasion.

Affected Public: Businesses or other for-profit (primary).

Reporting and Recordkeeping Hour Burden:

Responses: 830,

Burden Hours: 385.

Abstract: The Baccalaureate and Beyond Longitudinal Study, Third Followup (B&B:93/2003) will survey 1992–93 bachelor's degree recipients from public and private postsecondary institutions. The data will provide long term information on graduates' additional postsecondary education and training, employment, workforce activities, and other life experiences. The study directs special focus on sample members who began teaching.

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.RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at (540) 776–7742. 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. 01–27093 Filed 10–26–01; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Science; Basic Energy Sciences Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Basic Energy Sciences Advisory Committee (BESAC). Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, November 14, 2001, 8:00 a.m. to 5:00 p.m., and Thursday, November 15, 2001, 8:00 a.m. to 12:00 p.m.

ADDRESSES: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

FOR FURTHER INFORMATION CONTACT: Sharon Long; Office of Basic Energy Sciences; U. S. Department of Energy; 19901 Germantown Road; Germantown, MD 20874–1290; Telephone: (301) 903–5565.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: The purpose of this meeting is to provide advice and guidance with respect to the basic energy sciences research program.

Tentative Agenda: Agenda will include discussions of the following:

Wednesday, November 14, 2001

- Welcome and Introduction
- News from Basic Energy Sciences
- Presentations from the Nanoscale Science Research Centers
- Molecular Foundry, Lawrence Berkeley National Laboratory
- Center for Nanophase Materials Sciences, Oak Ridge National Laboratory
- Center for Integrated Nanotechnologies, Los Alamos National Laboratory and the Sandia National Laboratory

Thursday, November 15, 2001

- BESAC Discussion of Nanoscale Science Activities
- Brief Update on the Linac Coherent Light Source

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Sharon Long at 301–903–6594 (fax) or *sharon.long@science.doe.gov* (e-mail). You must make your request for an oral statement at least 5 business days prior to the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of this meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room; 1E–190, Forrestal Building; 1000 Independence Avenue, SW.; Washington, DC 20585; between 9:00 a.m. and 4:00 p.m., Monday through Friday, except holidays.

Issued in Washington, DC on October 25, 2001.

Rachel M. Samuel,

Deputy Advisory Committee, Management Officer.

[FR Doc. 01–27123 Filed 10–26–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, November 15, 2001, 5:30 p.m.—9:00 p.m.

ADDRESSES: 111 Memorial Drive, Barkley Centre, Paducah, Kentucky.

FOR FURTHER INFORMATION CONTACT: W. Don Seaborg, Deputy Designated Federal Officer, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (270) 441–6806.

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 and waste management activities.

Tentative Agenda

5:30 p.m.—Informal Discussion
6:00 p.m.—Call to Order; Approve Minutes
6:10 p.m.—DDFO's Comments; Board Response; Public Comments
7:00 p.m.—Presentations
8:30 p.m.—Task Force and Subcommittee Reports; Board Response; Public Comments
9:00 p.m.—Administrative Issues
9:30 p.m.—Adjourn

Copies of the final agenda will be available at the meeting.

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 Pat J. Halsey at the address or by telephone at 1–800–382–6938, #5. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments as the first item of the meeting agenda.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Environmental Information Center and Reading Room at 115 Memorial Drive, Barkley Centre, Paducah, Kentucky between 8:00 a.m. and 5:00 p.m. on Monday thru Friday or by writing to Pat J. Halsey, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001 or by calling her at 1–800–382–6938, #5.

Issued at Washington, DC, on October 23, 2001.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 01–27124 Filed 10–26–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

TransAlta Centralia Generation LLC Big Hanaford 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 the TransAlta Centralia Generation LLC Big Hanaford Project 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). This project is a 248-megawatt gas-fired, combined-cycle combustion turbine power generation project in Lewis County, Washington, which will help meet the immediate need for energy resources of the region and serve as a resource to meet future demand.

ADDRESSES: Copies of the TransAlta Centralia Generation LLC Big Hanaford Project ROD, Business Plan, Business Plan EIS, and Business Plan ROD may be obtained by calling BPA's toll-free document request line, 1–800–622–4520; or at our web site, *www.efw.bpa.gov.*

FOR FURTHER INFORMATION, CONTACT: Thomas C. McKinney, Bonneville Power Administration—KEC–4, P.O. Box 3621, Portland, Oregon, 97208–3621; toll-free telephone number 1–800–282–3713; fax number 503–230–5699; or e-mail *tcmckinney@bpa.gov.*

Issued in Portland, Oregon, on October 19, 2001.

Stephen J. Wright,

Acting Administrator and Chief Executive Officer.

[FR Doc. 01–27122 Filed 10–26–01; 8:45 am]

BILLING CODE 6450–01–U

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Federal Energy Management Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces an open meeting of the Federal Energy Management Advisory Committee (FEMAC). The Federal Advisory Committee Act (Public Law 92—463, 86 Stat. 770) requires announcement of these meetings in the **Federal Register** to allow for public participation. Executive Order 13123, ''Greening the Government through Efficient Energy Management,'' established the Federal Energy Management Advisory Committee (FEMAC) to provide public and private sector input to the Secretary of Energy on achieving new energy efficiency goals for Federal facilities. The U.S. Department of Energy's Office of Federal Energy Management Programs (FEMP) coordinates FEMAC activities.

DATES: Tuesday, November 13, 2001; 1 p.m. to 5 p.m.; Wednesday, November 14, 2001; 8:30 a.m. to 4 p.m.

ADDRESSES: Loews L'Enfant Plaza Hotel, 480 L'Enfant Plaza, SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Steven Huff, Designated Federal Officer for the Committee, Office of Federal Energy Management Programs, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; (202) 586–3507; *Steven.Huff@ee.doe.gov; http://www.eren.doe.gov/femp/aboutfemp/femac.html.*

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: To provide advice and guidance on a range of issues critical to meeting mandated Federal energy management goals.

Tentative Agenda: Agenda will include discussion on the following topics:

Tuesday, November 13, 2001, and Wednesday, November 14, 2001

- Federal energy management budget
- Energy-savings performance contracts
- Utility energy-efficiency service contracts
- Procurement of ENERGY STAR (Registered Trademark) and other energy efficient products
- Building design
- Process energy use
- Applications of efficient and renewable energy technology (including clean energy technology) at Federal facilities
- Other energy management issues and topics
- Public comment

Public Participation: In keeping with procedures, members of the public are welcome to observe the business of the Federal Energy Management Committee. If you would like to file a written statement with the committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, contact Steven Huff at (202) 586–3507 or *Steven.Huff@ee.doe.gov*. You must make your request for an oral statement at least 5 business days before the meeting. Members of the public will be heard in the order they sign up at the beginning of the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The committee chair will make every effort to hear the views of all interested parties. The chair will conduct the meeting to facilitate the orderly conduct of business. With the limited time available, the committee also encourages written recommendations, suggestions, position papers, etc., combined with a short oral summary statement. Documents may be submitted either before or following the meeting. This notice is being published less than 15 days before the date of the meeting due to the late resolution of programmatic issues.

Minutes: The minutes of the meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room; Room 1E—190; Forrestal Building; 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on October 25, 2001.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 01–27125 Filed 10–26–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR02–1–000]

Acacia Natural Gas Corporation; Notice of Petition for Rate Approval

October 23, 2001.

Take notice that on October 9, 2001, Acacia Natural Gas Corporation (Acacia) filed, pursuant to section 284.123(b)(2) of the Commission's Regulations, a petition for rate approval requesting that the Commission approve as fair and equitable a maximum rate of $0.1265 per MMBtu for interruptible transportation service, on Acacia's Bridgeport Gas Header system (Bridgeport system) under section 311 of the Natural Gas Policy Act of 1987.

Acacia states that it recently commenced interruptible section 311 transportation service on behalf of Mitchell Gas Services L.P. Acacia states that the proposed rate is designed using 90% of the design capacity of the Bridgeport system, calculated on a 100% load factor basis.

Pursuant to section 284.123(b)(2), if the Commission does not act within 150 days of the filing date, this rates will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for providing similar transportation service. The Commission may, prior to the expiration of the 150-day period, extend the time for action or institute a proceeding to afford interested parties an opportunity for written comments and for the oral presentation of views, data and arguments.

Any person desiring to participate in this rate proceeding must 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 motions must be filed with the Secretary of the Commission on or before November 7, 2001. This petition for rate approval is on file with the Commission and is 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. 01–27086 Filed 10–26–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT02–1–000]

ANR Pipeline Company; Notice of Service Agreement

October 23, 2001.

Take notice that on October 18, 2001, ANR Pipeline Company (ANR) filed two service agreements entered into with Alcoa, Inc. and Alcoa Building Products, Inc. (Alcoa) under Rate Schedule FTS–1 (the Alcoa Agreements).

ANR requests the Commission to find that the Alcoa Agreements do not contain any material deviations from ANR's Form of Service Agreement, and that the Agreements need not be filed pursuant to section 154.112(b) of the Commission's regulations. Alternatively, if the Commission finds that the Agreements contain a material deviation from ANR's Form of Service Agreement, ANR requests the Commission to either accept Sixth Revised Sheet No. 190 of ANR's Second Revised Volume No. 1, which references the Agreements as non-conforming agreements, or approve the Agreements as negotiated rate agreements authorized under section 30 of the General Terms and Conditions of ANR's FERC Gas Tariff.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before October 30, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. 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. 01–27083 Filed 10–26–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–536–001]

Florida Gas Transmission Company; Notice of Compliance Filing

October 23, 2001.

Take notice that on October 9, 2001 Florida Gas Transmission Company (Florida Gas) tendered for filing with the Federal Energy Regulatory Commission (Commission) its response to an issued raised by the Florida Municipal Natural Gas Association (FMNGA) in Florida Gas' underlying filing in Docket No. RP01–536–000.

Florida Gas states that the purpose of the instant filing is to comply with the Commission's Order issued September 27, 2001, which required Florida Gas to respond to FMNGA's suggestion that Florida Gas consider developing a system that would permit parties to determine the time that bids for capacity are submitted.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before October 30, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. 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. 01–27088 Filed 10–26–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–53–001]

Great Lakes Gas Transport, LLC; Notice of Compliance Filing

October 23, 2001.

Take notice that on December 8, 2000, Great Lakes Gas Transport, LLC (GT), formerly Gas Transport, Inc., filed an explanation of imbalance trading in compliance with a Commission order issued November 9, 2000 in Docket No. RM96–1–014, *et al.* The filing provides an explanation of imbalance trading on GT's system.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before October 30, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. 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. 01–27087 Filed 10–26–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–10–000 et al.]

Hydro Investors, Inc. etc; Notice of Complaint

In the matter of: *Hydro Investors, Inc.* v. *Trafalgar Power, Inc.,* Christine Falls of New York, Franklin Industrial Complex, Inc., Aetna Life Insurance Company, Algonquin Power Corporation, Algonquin Power Income Fund, and Algonquin Power Fund (Canada) Trafalgar Power, Inc.; (Docket No. EL02–10–000) Project Nos. 4900–068, 5000–064, 6878–010, 9685–026, 9709–057, 9821–097; Christine Falls of New York, Inc., formerly Christine Falls Corporation; Project No.4639–026; Franklin Industrial Complex, Inc.; Project No. 3760–011, Notice of Complaint.

October 23, 2001.

Take notice that on October 19, 2001, Hydro Investors, Inc. (HII), filed a complaint pursuant to Rule 206 of the Commission's Rules of Practice and Procedure, 18 CFR 385.206, and Part I of the Federal Power Act (FPA), 16 U.S.C. 791, *et seq.*, against Trafalgar Power, Inc. (Trafalgar), Christine Falls of New York (Christine Falls), Franklin Industrial Complex, Inc. (Franklin), Aetna Life Insurance Company (Aetna), Algonquin Power Corporation, Algonquin Power Income Fund and Algonquin Power Fund (Canada) (collectively Algonquin). HII alleges that Trafalgar and Algonquin have made inconsistent and contradictory statements to the Commission related to the requisite control exerted over the above-captioned projects, that Algonquin has suppressed the output from the Steven Mills Project No. 3760 in violation of section 10(h) of the FPA and removed the operating logs from the site of the project in violation of part 12 of the Commission's regulations. HII also alleges that Trafalgar, Christine Falls, and Franklin have engaged in financial misconduct in violation of the Commission's Uniform System of Accounts, 18 CFR Part 101.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before November 8, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to

intervene. Answers to the complaint shall also be due on or before November 8, 2001. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at http://www.ferc.gov using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–27081 Filed 10–26–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–21–000]

Northwest Pipeline Corporation; Notice of Proposed Changes in FERC Gas Tariff

October 23, 2001.

Take notice that on October 18, 2001, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, with an effective date of November 18, 2001:

Ninth Revised Sheet No. 24
Original Sheet No. 25
Sheet Nos. 26 through 29 (Reserved)
Fifth Revised Sheet No. 108
Third Revised Sheet No. 109
Second Revised Sheet No. 110
Fourth Revised Sheet No. 264
First Revised Sheet No. 264–A
Fifth Revised Sheet No. 274
First Revised Sheet No. 274–A
Original Sheet No. 274–B
Fifth Revised Sheet No. 275

Northwest states that the purpose of this filing is to propose three new tariff provisions related to a shipper's right to delivery point capacity when such capacity is available solely due to the construction or upgrade of meter station facilities that are requested and paid for by that shipper.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. 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. 01–27089 Filed 10–26–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–3063–000]

Southern Indiana Gas & Electric Company; Notice of Filing

October 23, 2001.

Take notice that on October 19, 2001, Southern Indiana Gas & Electric Company submitted a revised filing withdrawing its September 14, 2001 Notice of Termination of the Electric Power Agreement, FPC Rate Schedule No. 29, under which it was providing power to Alcoa Power Generating Inc. This Electric Power Agreement stemmed from its May 28, 1971 contract with Alcoa. The revised filing provides a substitute notice of termination, which has the effect of canceling the May 28, 1971 contract with Alcoa Power Generating Inc. on February 28, 2002.

Southern Indiana explains that the parties will use the additional time to attempt to reach long-term service agreements and to install metering facilities to accommodate services to Alcoa beginning on March 1, 2002.

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 November 2, 2001. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the 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. 01–27082 Filed 10–26–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–7–000]

Transcontinental Gas Pipe Line Corporation; Notice of Request Under Blanket Authorization

October 23, 2001.

Take notice that on October 15, 2001,Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, pursuant to sections 157.205 and 157.208 of the Federal Energy Regulatory Commission's (the Commission) Regulations under the Natural Gas Act (NGA), as amended, and blanket certificate authority granted in Docket No. CP82–426–000, filed in Docket No. CP02–7–00 a request for authorization to modify all of its existing reciprocating engines at Compressor Station No. 30 in Wharton County, Texas in order to comply with the State of Texas plan to implement the Clean Air Act Amendments of 1990 (Station 30 has 7 reciprocating/compressor units), all as more fully set forth in the request, which is on file with the Commission, and open for public inspection. This filing may be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' from the RIMS Menu and follow the instructions (please call 202–208–2222 for assistance).

Transco states that it plans to install turbochargers and associated equipment on all 7 of the reciprocating engines in order to reduce NO_X emissions. These engines currently do not have

turbochargers on them. At all 7 engines, emissions will be reduced by achieving a true lean air-fuel ratio, injecting high pressure fuel directly into the power cylinders and making other engine adjustments. The injection of high pressure fuel directly into the power cylinders significantly improves the combustion process by producing a more homogeneous mixture of air and fuel within the power cylinder. The true lean air-fuel ratio coupled with the high pressure fuel injection works by promoting stable combustion characteristics and thus reduces the formation of NO_X. Transco further states that, following installation of the turbochargers, the 7 engines will have the potential to perform above their current operating horsepower. However, it is stated that, since Station 30 is automated, Transco has the ability to shut down certain engines or reduce their load to ensure that the station will not operate above the station's total certificated horsepower. Since Transco will install these turbochargers at Station 30 solely to achieve an environmental improvement, i.e., lower NO_X emissions, it is stated that Transco has no intent or need to operate the station above its certificated horsepower. Therefore, Transco states that when it installs these turbochargers at Station 30 it will adjust the automation program at the station so that it will not operate above its certificated horsepower. Accordingly, there will be no increase in the capacity of Transco's system in the vicinity of the station as a result of installing the 7 new turbochargers.

Transco states that installation of new turbochargers at Station 30 will require some work to be done outside of the compressor building. A fuel gas header designed to bring high pressure fuel gas to each individual reciprocating unit will extend from the yard to the building with a supply to each unit. A new power supply building with approximate dimensions of 13 feet by 35 feet will be installed in the yard to supply uninterrupted power to the new equipment and unit control panels. New fin-fan coolers will be installed in the yard to satisfy the additional cooling requirements of the new turbochargers. Modifications of the type proposed may require the installation of a new utility system which would be built within existing buildings, but may require expanding out from them. All of the proposed work described above will be built within 50 feet of existing station facilities and will be done within the confines of previously disturbed areas. Approximately 1.05 acres of previously disturbed ground will be affected by the proposed project. Restoration of this area will be conducted according to the Commission's Upland Erosion Control, Revegetation, and Maintenance Plan.

Transco states that the above-referenced modifications are estimated to cost $11.9 million.

Transco further states that the installation and operation of the proposed facilities will have no significant impact on the quality of human health or the environment other than the positive impact of reducing NO_X emissions. Transco certifies that the proposed facilities will be designed, constructed, operated and maintained in accordance with all applicable safety standards and plans for maintenance and inspection. Accordingly, Transco submits that this project will serve the public convenience and necessity because it will (1) reduce NO_X emissions at Station 30, and (2) enable Transco to comply with the Clean Air Act Amendments of 1990 and the state implementation plan pursuant thereto. Transco states that it needs to commence the work at Station 30 in January 2002 in order to complete the work on a timely basis with respect to the requirements of the Clean Air Act Amendments of 1990 and the state implementation plan, while at the same time accommodating the operational needs of its pipeline system and ensuring that Transco's gas service obligations are met. It is stated that a state air permit will be negotiated.

Any questions regarding this filing should be directed to Tom Messick, Transcontinental Gas Pipe Line Corporation, P.O. Box 1396, Houston, Texas 77251, call (713) 215–2772.

Any person or the Commission's staff may, within 45 day after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the Regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.gov under the link to the User's Guide. If you have not yet established an account, you will need to create a new account by clicking on ''Login to File'' and then ''New User Account''.

David P. Boergers,

Secretary.

[FR Doc. 01–27080 Filed 10–26–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC00–46–002, et al.]

Vermont Yankee Nuclear Power Corporation, et al.; Electric Rate and Corporate Regulation Filings

October 22, 2001.

Take notice that the following filings have been made with the Commission:

[Docket Nos. EC00–46–002, ER00–1027–000, ER00–1028–000, ER00–1029–000, and EL00–86–001]

1. Vermont Yankee Nuclear Power Corporation; Boylston Municipal Light Department, et al. v. Vermont Yankee Nuclear Power Corporation, et al.

Take notice that on October 16, 2001, Vermont Yankee Nuclear Power Corporation (Vermont Yankee) submitted for filing a Refund Report along with supporting materials. The refunds were made pursuant to the terms of a settlement agreement in the captioned proceeding.

Vermont Yankee states that copies of the Refund Report have been served on the persons listed on the official service list for this proceeding, affected customers, and to each state commission within whose jurisdiction the affected customers distribute and sell electric energy at retail.

Comment date: November 6, 2001, in accordance with Standard Paragraph E at the end of this notice.

2. Rainy River Energy Corporation—Taconite Harbor

[Docket No. EG02–9–000]

Take notice that on October 18, 2001, Rainy River Energy Corporation—Taconite Harbor (Applicant), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations. Applicant is a wholly-owned indirect subsidiary of Minnesota Power.

Applicant stated that it served its application on the following: Minnesota Power, the Public Utilities Commission,

Wisconsin Public Service Commission and the Securities and Exchange Commission.

Comment date: November 12, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Elwood Expansion, LLC

[Docket No. EG02–10–000]

Take notice that on October 19, 2001, Elwood Expansion, LLC (Elwood Expansion) filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Elwood Expansion, a Delaware limited liability company, is owned 50% by Dominion Elwood Expansion, Inc., a Delaware corporation, and 50% by Peoples Elwood Expansion, LLC, a Delaware limited liability company. Elwood Expansion, Inc. is a wholly owned subsidiary of Dominion Energy, Inc., which in turn is a wholly owned subsidiary of Dominion Resources, Inc. Peoples Elwood Expansion, LLC is a wholly owned subsidiary of PERC Power, LLC, which in turn is a wholly owned subsidiary of Peoples Energy Resources Corp., a wholly owned subsidiary of Peoples Energy Corporation.

Elwood Expansion, LLC will be exclusively engaged in the business of owning, operating and selling electricity exclusively at wholesale from an electric generating facility located near Elwood, Illinois. The facility, which is currently in the early stages of development, is expected to consist of two approximately 500 MW gas-fired combined-cycle generating units. In addition, the Facility may include various other as yet unidentified transmission interconnection facilities that will be necessary to interconnect the Facility to the transmission system of Commonwealth Edison Company.

Comment date: November 12, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. Alliant Energy Corporate Services, Inc. Services, Inc.

[Docket No. ER01–312–003]

Take notice that on October 18, 2001, Alliant Energy Corporate Services, Inc. tendered for filing a Refund Report in response to the Commission's Letter Order dated September 12, 2001 in Docket Nos. ER01–312–000 and ER01–312–001.

A copy of this filing has been served upon all affected customers, the Illinois Commerce Commission, the Iowa Utilities Board, the Minnesota Public Utilities Commission and the Public Service Commission of Wisconsin.

Comment date: November 8, 2001, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–27079 Filed 10–26–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Competing Application Accepted for Filing and Soliciting Comments, Protests, and Motions To Intervene

October 23, 2001.

Take notice that the following competing hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12109–000.

c. *Date filed:* August 27, 2001.

d. *Applicant:* Greybull Valley Irrigation District.

e. *Name and Location of Project:* The Lower Sunshine Dam Project would be located on Sunshine Creek in Park County, Wyoming.

Competing Application: Project No. 11958–000, Date Filed: April 16, 2001, Date Notice Closed: July 29, 2001.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant contact:* Mr. David W. Edwards, 3542 Road 10, Emblem, WY 82422, (307) 762–3397, fax (307) 762–3771.

h. *FERC Contact:* Tom Papsidero, (202) 219–2715.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Please include the project number (P–12109–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed project would consist of: (1) The applicant's existing Lower Sunshine Reservoir which has a storage capacity of 56,820 acre-feet at an elevation of 6,277 feet m.s.l., (2) a proposed powerhouse with a total installed capacity of 6.6 megawatts, (3) a proposed 50-foot-long penstock, (4) a proposed one-mile-long, 13.5 kv transmission line, and (5) appurtenant facilities. The project would have an average annual generation of 13.0 GWh.

k. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be

viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item g above.

l. *Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. *Preliminary Permit*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 01–27084 Filed 10–26–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Protests, and Motions To Intervene

October 23, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12113–000.

c. *Date filed:* September 4, 2001.

d. *Applicant:* Big Rock Power Partners.

e. *Name and Location of Project:* The Willow Creek Project would be located on Willow Creek in Humboldt County, California at a location known as Steamboat Rock.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant contact:* Mr. Patrick Shannon, P.O. Box 1275, 42042 Highway 299, Willow Creek, California 95573.

h. *FERC Contact:* Tom Papsidero, (202) 219–2715.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Copies of this filing are on file with the Commission and are available for public inspection. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Please include the project number (P–12113–000) on any comments or motions filed. The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed project would consist of: (1) A proposed 80-foot-long, 15-foot-high concrete diversion dam, (2) a proposed 2,500-foot-long, 96-inch-diameter steel

penstock, (3) a proposed powerhouse containing three generating units having a total installed capacity of 5.45 MW, (4) existing transmission lines belonging to Pacific Gas and Electric Co., and (5) appurtenant facilities. The project would have an annual generation of 15.3 GWh.

k. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item g above.

l. *Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. *Preliminary Permit*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. *Proposed Scope of Studies Under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 01–27085 Filed 10–26–01; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[FRL–7091–6]

Agency Information Collection Activities: Request for Comments on the Fourteen Proposed Information Collection Requests (ICRs) Listed Under Supplementary Information, Section A

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the fourteen continuing Information Collection Requests (ICRs) listed in section A of this notice to the Office of Management and Budget (OMB). Before submitting the ICRs to OMB for review and approval, EPA is soliciting comments on specific aspects of the information collections as described at the beginning of the Supplementary Information provided in this notice.

DATES: Comments must be submitted on or before December 28, 2001.

ADDRESSES: Compliance Assessment and Media Programs Division, Office of Compliance, Office of Enforcement and Compliance Assurance, Mail Code 2223A, United States Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. A hard copy of a specific ICR may be obtained without charge by calling the identified information contact person listed in section B under Supplementary Information.

FOR FURTHER INFORMATION CONTACT: For specific information on an individual ICR, contact the person listed in section B under Supplementary Information.

SUPPLEMENTARY INFORMATION:

For All ICRs

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are displayed in 40 CFR part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who respond through the use of automated, electronic, mechanical, or other forms of information technology.

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.

In the absence of such information collection requirements, enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act. Consequently, these information collection requirements are mandatory, and the records required by New Source Performance Standards (NSPS) must be retained by the owner or operator for at least two years; records required by the National Emission Standards for Hazardous Air Pollutants (NESHAP) must be retained by the owner or operator for at least five years; and records required by the NESHAP Maximum Achievable Control Technology standards (NESHAP–MACT) must be retained by the owner or operator for at least five years. In general, the required information consists of emissions data and other information deemed not to be private. However, any information submitted to the Agency for which a claim of confidentiality is made will be safeguarded according to the Agency policies set forth in Title 40, chapter 1, part 2, subpart B—Confidentiality of Business Information (see 40 CFR part 2; 41 FR 36902, September 1, 1976; amended by 43 FR 39999, September 8, 1978; 43 FR 42251, September 28, 1978; 44 FR 17674, March 2, 1979).

The Agency computed the burden for each of the recordkeeping and reporting requirements applicable to the industry for the currently approved Information Collection Requests (ICRs). Where applicable, the Agency identified specific tasks and made assumptions, while being consistent with the concept of the Paper Work Reduction Act.

Section A: List of ICRs To Be Submitted for OMB Review and Approval

In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following fourteen continuing Information Collection Requests (ICRs) to the Office of Management and Budget (OMB).

(1) *NSPS Subparts Ea and Eb*: NSPS for Municipal Waste Combustors (Subparts Ea and Eb); EPA ICR Number 1506.09; OMB Control Number 2060–0210; expiration date March 31, 2002.

(2) *NSPS Subpart LL*: NSPS for Metallic Mineral Processing Plants (Subpart LL); EPA ICR Number 0982.07; OMB Control Number 2060–0016; expiration date July 31, 2002.

(3) *NESHAP–MACT Subpart TTT*: NESHAP—Primary Lead Smelting; EPA ICR Number 1856.03; OMB Control Number 2060–0414; expiration date July 31, 2002.

(4) *NESHAP–MACT Subpart CCC*: NESHAP—Steel Pickling; EPA ICR Number 1821.03; OMB Control Number 2060–0419; expiration date July 31, 2002.

(5) *NESHAP–MACT Subpart LLL*: NESHAP for the Portland Cement Manufacturing Industry; EPA ICR Number 1801.03; OMB Control Number 2060–0416; expiration date August 31, 2002.

(6) *NESHAP Subpart N*: NESHAP for Inorganic Arsenic Emissions from Glass Manufacturing Plants (Part 61, Subpart N); EPA ICR Number 1081.07; OMB Control Number 2060–0043; expiration date August 31, 2002.

(7) *NSPS Subpart H*: NSPS for Sulfuric Acid Plants (Subpart H); EPA ICR Number 1057.09; OMB Control Number 2060–0041; expiration date August 31, 2002.

(8) *NSPS Subpart UUU*: NSPS for Calciners and Dryers in Mineral Industries (Subpart UUU); EPA ICR Number 0746.05; OMB Control Number 2060–0251; expiration date August 31, 2002.

(9) *NSPS Subpart VV*: NSPS for volatile organic compounds (VOCs) in the Synthetic Chemical Manufacturing Industry (SOCMI)—40 CFR part 60, subpart VV; EPA ICR Number 0662.07; OMB Control Number 2060–0012; expiration date August 31, 2002.

(10) *NSPS Subparts N and Na*: NSPS for Iron and Steel Plants—Basic Oxygen Furnaces (Subparts N and Na); EPA ICR Number 1069.07; OMB Control Number 2060–0029; expiration date September 31, 2002.

(11) *NSPS Subpart XX*: NSPS for Bulk Gasoline Terminals (Subpart XX); EPA ICR Number 0664.07; OMB Number 2060–0006; expiration date September 30, 2002.

(12) *NSPS Subpart DDD*: NSPS for the Polymer Manufacturing Industry (Subpart DDD); EPA ICR Number 1150.06; OMB Control Number 2060–0145; expiration date September 30, 2002.

(13) *NESHAP–MACT Subpart YY*: National Emission Standards for Hazardous Air Pollutants—Generic Maximum Achievable Control Technology Standards; EPA ICR Number 1871.03; OMB Control Number 2060–0420; expiration date September 30, 2002.

(14) NSPS Subpart CC: NSPS for Glass Manufacturing Plants (40 CFR part 60, subpart CC); EPA ICR Number 1131.07; OMB Control Number 2060–0054; expiration date October 31, 2002.

Section B: Contact Person for Individual ICRs

(1) *NSPS Subparts Ea and Eb:* NSPS for Municipal Waste Combustors (Subparts Ea and Eb); Jonathan Binder of the Compliance Assistance Policy and Integration Branch at (202) 564–2516 or via E-mail to *binder.jonathan@epa.gov;* EPA ICR Number 1506.09; OMB Control Number 2060–0210; expiration date March 31, 2002.

(2) *NSPS Subpart LL:* NSPS for Metallic Mineral Processing Plants (Subpart LL); Gregory Fried of the Air, Hazardous Waste and Toxics Branch at (202) 546–7016 or via E-mail at *fried.gregory@epa.gov;* EPA ICR Number 0982.07; OMB Control Number 2060–0016; expiration date July 31, 2002.

(3) *NESHAP–MACT Subpart TTT:* NESHAP–Primary Lead Smelting; contact Maria Malave of the Air, Hazardous Waste and Toxics Branch at (202) 564–7027 or via E-mail to *malave.maria@epa.gov;* EPA ICR Number 1856.03; OMB Control Number 2060–0414; expiration date July 31, 2002.

(4) *NESHAP–MACT Subparts CCC:* NESHAP–Steel Pickling; contact Maria Malave of the Air, Hazardous Waste and Toxics Branch at(202) 564–7027 or via E-mail to *malave.maria@epa.gov;* EPA ICR Number 1821.03; OMB Control

Number 2060–0419; expiration date July 31, 2002.

(5) *NESHAP–MACT Subpart LLL:* NESHAP for the Portland Cement Manufacturing; Gregory Fried of the Air, Hazardous Waste and Toxics Branch at (202) 546–7016 or via E-mail at *fried.gregory@epa.gov;* EPA ICR Number 1801.03; OMB Control Number 2060–0416; expiration date August 31, 2002.

(6) *NESHAP Subpart N:* NESHAP for Inorganic Arsenic Emissions from Glass Manufacturing Plants (Part 61, Subpart N); Gregory Fried of the Air, Hazardous Waste and Toxics Branch at (202) 546–7016 or via E-mail at *fried.gregory@epa.gov;* EPA ICR Number 1081.07; OMB Control Number 2060–0043; expiration date August 31, 2002.

(7) *NSPS Subpart H:* NSPS for Sulfuric Acid Plants (Subpart H); Marcia Mia of the Air, Hazardous Waste and Toxics Branch at (202) 564–7042 or via E-mail at *mia.marcia@epa.gov;* EPA ICR Number 1057.09; OMB Control Number 2060–0041; expiration date August 31, 2002.

(8) *NSPS Subpart UUU:* NSPS for Calciners and Dryers in Mineral Industries (Subpart UUU); Gregory Fried of the Air, Hazardous Waste and Toxics Branch at (202) 546–7016 or via E-mail at *fried.gregory@epa.gov*; EPA ICR Number 0746.05; OMB Control Number 2060–0251; expiration date August 31, 2002.

(9) *NSPS Subpart VV:* NSPS for volatile organic compounds (VOCs) in the Synthetic Chemical Manufacturing Industry (SOCMI)–40 CFR part 60, subpart VV; Marcia Mia of the Air, Hazardous Waste and Toxics Branch at (202) 564–7042 or via E-mail at *mia.marcia@epa.gov;* EPA ICR Number 0662.06; OMB Control Number 2060–0012; expiration date August 31, 2002.

(10) *NSPS Subparts N and Na:* NSPS for Iron and Steel Plants-Basic Oxygen Furnaces (Subparts N and Na); Maria Malave of the Air, Hazardous Waste and Toxics Branch at (202) 564–7027 or via E-mail to *malave.maria@epa.gov;* EPA ICR Number 1069.07; OMB Control Number 2060–0029; expiration date September 31, 2002.

(11) *NSPS Subpart XX:* NSPS for Bulk Gasoline Terminals (Subpart XX); Julie Tankersley of the Compliance Monitoring and Water Programs Branch at (202) 564–7002 or via E-mail to *tankersley.julie@epa.gov*; EPA ICR Number 0664.07; OMB Number 2060–0006; expiration date September 30, 2002.

(12) *NSPS Subpart DDD:* NSPS for the Polymer Manufacturing Industry (Subpart DDD); Sally Sasnett, of the Sector Analysis and Implementation Branch, (202) 564–7074 or via E-mail at *sasnett.sally@epa.gov*; EPA ICR Number 1150.06; OMB Control Number 2060–0145; expiration date September 30, 2002.

(13) *NESHAP–MACT Subpart YY:* National Emission Standards for Hazardous Air Pollutants-Generic Maximum Achievable Control Technology Standards; Sally Harmon of the Air, Hazardous Waste and Toxics Branch at (202) 564–7012 or via E-mail at *harmon.sally@epa.gov;* EPA ICR Number 1871.03; OMB Control Number 2060–0420; expiration date September 30, 2002.

(14) *NSPS Subpart CC:* NSPS for Glass Manufacturing Plants (40 CFR part 60, subpart CC); Gregory Fried of the Air, Hazardous Waste and Toxics Branch at (202) 546–7016 or via email at *fried.gregory@epa.gov*; EPA ICR Number 1131.07; OMB Control Number 2060–0054; expiration date October 31, 2002.

Section C: Summaries of Individual ICRs

(1) *NSPS Subparts Ea and Eb:* NSPS for Municipal Waste Combustors (Subparts Ea and Eb); EPA ICR Number 1506.09; OMB Control Number 2060–0210; expiration date March 31, 2002.

Affected Entities: Entities potentially affected by this action are those municipal waste combustors (MWCs) subject to the standards at 40 CFR part 60, subparts Ea and Eb for which: (1) Construction commenced after December 20, 1989 and on or before September 20, 1994, or (2) modification or reconstruction commenced after December 20, 1989 and on or before June 19, 1996. Entities potentially affected by this action under 40 CFR part 60, subpart Eb are those MWCs for which: (1) construction commenced after September 20, 1994, or (2) modification or reconstruction commenced after June 19, 1996. Both of these standards apply to MWCs with unit capacities greater than 225 megagrams per day.

Abstract: The Agency has determined that emissions from MWCs cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. NSPS subparts Ea and Eb require owners and operators with unit capacity above 225 megagrams per day to notify the Agency of the date of construction or reconstruction, the anticipated and actual startup dates, and notification of any physical or operation change to an existing facility which may increase the regulated pollutant emission rate. Owners and operators are also required to maintain records of the occurrence and duration of the startup, shutdown, or malfunction in the operation of an affected facility. Facilities subject to subpart Ea must install continuous monitoring systems (CMS) to monitor specified operating parameters to ensure that good combustion practices are implemented on a continuous basis. Owners and operators must submit quarterly and annual compliance reports. In addition, reporting and recordkeeping requirements for facilities subject to subpart Eb include information on cadmium, lead and mercury pollutants, and fugitive ash emissions testing and MWC siting requirements.

Burden Statement: In the previously approved ICR, the estimated number of respondents for this information collection was 40 with 212 responses per year. The annual reporting and recordkeeping hour burden for this collection was estimated to be 70,730 hours. On the average, each respondent reported 5.3 times per year and 334 hours were spent preparing each response. The total annual reporting and recordkeeping cost burden for this collection was $563,010. This represented a $240,000 burden associated with capital/startup cost and a $323,010 burden associated with the annual operation and maintenance cost.

(2) *NSPS Subpart LL:* NSPS for Metallic Mineral Processing Plants (Subpart LL); EPA ICR Number 0982.07; OMB Control Number 2060–0016; expiration date July 31, 2001.

Affected Entities: Entities potentially affected by this action are those metallic mineral processing plants subject to the standards at 40 CFR part 60, subpart LL and include the following processes: each crusher and screen (open-pit mines); each crusher, screen, bucket, elevator, conveyor belt transfer point, thermal dryer, product packaging station, storage bin, enclosed storage area, truck loading and unloading station at a mill or concentrator which commenced construction, modification or reconstruction after August 24, 1992. The NSPS does not apply to facilities located in underground mines, or to facilities performing the beneficiation of uranium ore at uranium ore processing plants.

Abstract: The Agency has determined that particulate matter from metallic mineral processing plants cause, or contribute significantly to air pollution that may reasonably be anticipated to endanger public health or welfare. Owners or operators of the affected facilities must make initial notifications, including notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate, notification of the demonstration of the continuous monitoring system (CMS), and

notification of the initial performance test. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which a monitoring system is inoperative.

Semiannual emission reports and monitoring systems performance reports are required. The reports include a record of any exceedance, description of the nature and cause of the problem, corrective measures taken, and identification of the period during which any CMS was inoperative.

Burden Statement: In the previously approved ICR, the average annual burden to industry was estimated to be 1,760 hours. The estimated number of existing sources subject to the NSPS for metallic mineral processing was 22. The total number of annual responses required by this regulation was estimated to be 44. Therefore, the frequency of response was 2.0 times per year with an average of 40 hours spent preparing each response.

The average annual operations and maintenance cost associated with this regulation was estimated to be $14,300. No capital costs were calculated because no new sources were expected to become subject to the standard over the three-year period covered by the ICR.

(3) *NESHAP—MACT Subpart TTT:* NESHAP—Primary Lead Smelting; EPA ICR Number 1856.03; OMB Control Number 2060–0414; expiration date July 31, 2002.

Affected Entities: Entities potentially affected by this action are those sinter machine, blast furnace, dross furnace, process fugitive, and fugitive dust sources at primary lead smelters subject to the standards at 40 CFR part 63, subpart TTT.

Abstract: The Agency has determined that emissions from primary lead smelters cause, or contribute significantly to air pollution that may reasonably be anticipated to endanger public health or welfare. All sources subject to this standard are required to submit: an initial report specifying the intended methods of compliance; a site-specific test plan prior to a performance test; certain Standard Operating Procedure Manuals; an initial statement of compliance that delineates the compliance methods chosen; a performance test report for lead compounds; and semiannual reports that include all monitoring results and a summary of any baghouse leak detector system alarms including a description of the corrective actions taken. Respondents must also submit reports, when applicable, regarding startup, shutdown, malfunctions, process changes, and construction or reconstruction.

In addition to the records required by 40 CFR part 63, subpart A (General Provisions), all respondents must maintain records of production for unrefined lead, copper matte, and copper speiss; the date and times of bag leak detector system alarms and the corrective action taken; and of baghouse inspection and maintenance activities.

Burden Statement: In the previously approved ICR, the reporting and recordkeeping hour burden for the information collection was 2,002 hours per year based on 3 existing respondents. The frequency of the response, except for initial requirements, is semiannual. The number of responses in the currently approved ICR is 6. Therefore, the number of hours, on the average, to prepare each response was 334. On the OMB 83–I Form in the previous ICR, 13 initial notification responses that were listed in the supporting statement were not shown in Block 13. So the correct number of responses for the previously approved ICR should have been 19 rather than 6.

The total annual recordkeeping and cost burden over the three-year period of the previously approved ICR is approximately $40,500 with $35,000 attributed to capital/startup costs and $5,500 to operation and maintenance (O&M) costs. Since no new sources are expected to startup over the next three years, the total projected annual recordkeeping and cost burden over the next three years is estimated to be $5,500 per year for O&M costs.

(4) *NESHAP–MACT Subpart CCC:* NESHAP—Steel Pickling; EPA ICR Number 1821.03; OMB Control Number 2060–0419; expiration date July 31, 2002.

Affected Entities: The entities affected by this standard are new and existing carbon steel pickling facilities which are subject to the standards at 40 CFR part 63, subpart CCC. The affected sources include batch and continuous pickling lines, acid regeneration plants, and acid storage tanks.

Abstract: The Agency has determined that emissions from steel pickling cause, or contribute significantly to air pollution that may reasonably be anticipated to endanger public health or welfare. In accordance with the 40 CFR part 63, subpart A (General Provisions), respondents must submit a one-time notification of applicability and a one-time report on the performance test results for the primary emission control device. Respondents must develop and implement a Startup, Shutdown, and Malfunction Plan and submit semiannual reports for any occurrence where the procedures in the plan were not followed. Respondents are also required to submit semiannual reports for periods of operation during which the measured emissions exceeded that allowed by the standard and provide a written maintenance plan for each emission control device.

Respondents must also demonstrate compliance with the hydrochloric acid and chorine emission limitations and the requirements for each pickling line and acid regeneration plant by performing annual performance tests and installing devices to measure/record control device outputs and acid regeneration plant operating parameters.

Burden Statement: In the previously approved ICR, the total annual recordkeeping and reporting hourly burden was estimated at 23,190 hours. This estimate was based on 70 respondents with 1 new affected facility becoming subject to the standard over the three-year period. Based on the supporting data provided in the supporting statement of the previous ICR, the total annual responses averaged 47 per year. However, the OMB 83–I Form indicates that the total annual number of responses is 23 which was improperly calculated when compared to the supporting statement. The frequency of response should have been 0.7 responses per year rather than 0.3. Over the next three years, the reporting requirements will be semiannual, so the frequency of reporting will increase to 2.0 per respondent-year.

The annual reporting and recordkeeping cost burden was $15,687 per year. The capital/startup cost for monitoring devices was $8,217 averaged over the first three years of the ICR. The annualized cost of capital equipment is based on 80 percent of facilities purchasing monitoring equipment, and on an equipment lifetime of 15 years, an interest rate of 7 percent, and a capital recovery factor of 0.11. The operation and maintenance costs were estimated at $7,470 per year (averaged over the three-year period).

(5) *NESHAP–MACT Subpart LLL:* NESHAP for the Portland Cement Manufacturing Industry; EPA ICR Number 1801.03; OMB Control Number 2060–0416; expiration date August 31, 2002.

Affected Entities: Entities potentially affected by this action are those emission sources at new and existing portland cement plants subject to the standards at 40 CFR part 63, subpart LLL.

Abstract: The Agency has determined that emissions from portland cement

plants contribute significantly to air pollution that may reasonably be anticipated to endanger public health or welfare. The standard applies to each new, existing or reconstructed kiln, in-line kiln/raw mill and greenfield raw material dryer at portland cement plants, except for kilns and in-line kiln/raw mills that burn hazardous waste which are subject to 40 CFR part 63, subpart EEE. In addition, the standard applies to each new, existing or reconstructed clinker cooler, raw mill, finish mill, raw material, clinker or finished product storage bin; conveying system transfer point; bagging system and bulk loading and unloading system at facilities which are major sources; and to each existing, reconstructed or new brownfield raw material dryer at facilities which are major sources.

Respondents shall submit notifications and reports of the initial performance test results. Plants must develop and implement a Startup, Shutdown, and Malfunction Plan and submit semiannual reports of any event where the plan was not followed. Plants must develop and implement an operations and maintenance plan and conduct and report the results of an annual combustion system inspection. Semiannual reports for periods of operation during which the monitoring parameters are exceeded (or reports certifying that no exceedances have occurred) also are required.

General requirements applicable to all NESHAP require records of applicability determinations; test results; exceedances; periods of startups, shutdowns, or malfunctions; monitoring records; and any other information needed to determine compliance with the applicable standard.

Subpart LLL requires respondents to install (where feasible) continuous opacity monitors and temperature monitoring systems on kilns and in-line kiln raw mills, and total hydrocarbon continuous emission monitors (CEMs) on new greenfield kilns, in-line kiln/raw mills and raw material dryers. Owners and operators are also subject to a deferred requirement to install particulate matter CEMS. Respondents are also required to maintain records of specific information needed to determine that the standards are being achieved and maintained.

Burden Statement: In the previously approved ICR, the average annual burden to industry for the last three years was estimated at 77,331 hours per year for 36 respondents (i.e., sources). The total number of annual responses required by this regulation was estimated to be 954. Thus, the frequency of response was estimated to be 27 responses per year with an average of 81 hours spent preparing each response.

In the previously approved ICR, the total capital/startup cost associated with monitoring equipment was estimated at $1,432,000 per year. This corresponds to an average annualized capital cost of $750,000 per year for the three years following promulgation. Annual operation and maintenance costs averaged $682,000 per year.

(6) *NESHAP Subpart N:* NESHAP for Inorganic Arsenic Emissions from Glass Manufacturing Plants (Part 61, Subpart N); EPA ICR Number 1081.07; OMB Control Number 2060–0043; expiration date August 31, 2002.

Affected Entities: Entities potentially affected by this action are each glass melting furnace that uses commercial arsenic as a raw material that is subject to the standards at 40 CFR part 61, subpart N.

Abstract: The Administrator has judged that arsenic emissions from glass manufacturing plants cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Sources subject to NESHAP subpart N are required to demonstrate initial compliance through emission tests. In addition, a continuous monitoring system (CMS) for the measurement of the opacity of emissions from any control device must be installed and operated. The regulation also requires initial notifications for construction, modification, CMS demonstration, and performance testing. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Monitoring requirements specific to this regulation provide information on the operation of the emissions control device and compliance with the emission limit. Records and reports addressing each approved control device bypass are required. Arsenic emission estimates and semiannual reports of uncontrolled arsenic emissions are also required.

Burden Statement: In the previously approved ICR, the average annual burden to industry over the past three years from these recordkeeping and reporting requirements was estimated at 6,769 hours per year with 47 sources subject to the standard. The total number of annual responses required by this regulation was estimated to be 43. The annual reporting and recordkeeping burden for the collection of information was estimated to average approximately 157 hours per response, and the frequency of response was estimated to be 0.9 responses per year.

In the previously approved ICR, there were no capital/startup costs because no new sources were expected to startup during the ICR renewal period. The annual operation and maintenance cost for the 47 existing sources was estimated to be $164,500.

(7) *NSPS Subpart H:* NSPS for Sulfuric Acid Plants (Subpart H); EPA ICR Number 1057.09; OMB Control Number 2060–0041; expiration date August 31, 2002.

Affected Entities: Entities potentially affected by this action are those contact sulfuric acid plants that burn elemental sulfur, alkylation acid, hydrogen sulfide, organic sulfides, mercaptans, or acid sludge subject to the standards at 40 CFR part 60, subpart H. The standards do not address facilities where conversion to sulfuric acid is used primarily as a means of preventing emissions to the atmosphere of sulfur dioxide or other sulfur compounds.

Abstract: In the Administrator's judgment, sulfur dioxide (SO_2) and acid mist emissions from sulfuric acid plants cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Owners or operators of the affected facilities described must make the following one-time-only reports: notification of the date of construction or reconstruction; notification of the anticipated and actual dates of startup; notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate; notification of demonstration of the continuous monitoring system (CMS); notification of the date of the initial performance test, and the results of the initial performance test. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative.

The reporting requirements for this industry include the initial notifications listed, the initial performance test results, and semiannual reports of excess emissions. Excess emission reports shall include all three-hour periods (or the arithmetic average of three consecutive one-hour periods) during which the integrated average SO_2 emission exceeded the applicable standard. Excess emission reports must include: the magnitude of excess emissions; conversion factors used; the date and time of commencement and completion of each excess emission time period; identification of excess

emissions occurring during startups, shutdowns, and malfunctions; the nature and cause of the malfunction and corrective measures taken; and identification of the time period during which the CEMS was inoperative.

The reporting requirements include semiannual excess emission reports and monitoring system performance reports which include information regarding the exceedances of control device operating parameters; the date and time of the exceedance or deviance; the nature and cause of the malfunction and corrective measures taken; and identification of the time period during which the CMS was inoperative.

Burden Statement: In the previously approved ICR, the projected hour burden was 24,823. The number of respondents was 106. The total number of annual responses was estimated to be 212 which is a reporting frequency of 2 times per year with an average of 117 hours spent preparing each response.

The annual reporting and recordkeeping cost burden was estimated to be $477,000 for the operation and maintenance of the required SO_2 monitors.

(8) *NSPS Subpart UUU:* NSPS for Calciners and Dryers in Mineral Industries (Subpart UUU); EPA ICR Number 0746.05; OMB Control Number 2060–0251; expiration date August 31, 2002

Affected Entities: Entities potentially affected by this action are each calciner or dryer at a mineral processing plant subject to the standards at 40 CFR part 60, subpart UUU. The standards apply to new, modified and reconstructed calciners and dryers at mineral processing plants that process or produce any of the following minerals and their concentrates or any mixture of which the majority is any of the following minerals or a combination of these minerals: Alumina, ball clay, bentonite, diatomite, feldspar, fire clay, fuller's earth, gypsum, industrial sand, kaolin, lightweight aggregate, magnesium compounds, perlite, roofing granules, talc, titanium dioxide, and vermiculite. There are several applicability exceptions. Feed and product conveyors are not considered part of the affected facility. Facilities subject to 40 CFR part 60, subpart LL, Metallic Mineral Processing Plants are not subject to this standard. There are additional processes and process units listed in the standard which are not subject to the provisions of this subpart.

Abstract: In the Administrator's judgement, particulate matter released from calciners and dryers cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Owners or operators of the affected facilities must make one-time only reports including notifications of facility startup, scheduling and results of the initial performance test; notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate; and notification of the demonstration of the continuous monitoring system (CMS). Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Performance tests are needed as these are the Agency's records of a source's initial capability to comply with emissions standards and note the operating conditions under which compliance was achieved.

The monitoring requirements are outlined in § 60.734 of the standard. They are dependant on the type of dryers or calciner. Specific calciners and dryers are required to install, calibrate, maintain, and operate a continuous monitoring system. Semiannual reports of excess emissions are required.

Burden Statement: In the previously approved ICR, the total annual burden to industry was estimated to be 6,019 hours. The total number of sources was estimated to be 155 and the total number of annual responses required by this regulation was estimated to be 310. The annual public reporting and recordkeeping burden for this collection of information was estimated to average 19 hours per response with a frequency of response estimated to be 2.0 responses per year. Approximately 5 new sources a year become subject to the standard.

In the previously approved ICR, the capital/startup costs to comply with this standard were estimated at $20,000. This was based on 5 new sources per year multiplied by $4,000 per monitoring device. The annual operations and maintenance cost (O&M) was estimated at $97,500. Therefore, the average annual burden for capital/startup and O&M cost were, therefore, estimated to be $117,500.

(9) *NSPS Subpart VV:* NSPS for volatile organic compounds (VOCs) in the Synthetic Chemical Manufacturing Industry (SOCMI)—40 CFR part 60, subpart VV; EPA ICR Number 0662.06; OMB Control Number 2060–0012; expiration date August 31, 2002.

Affected Entities: The standards at 40 CFR part 60, subpart VV apply to specific pieces of process unit equipment used in the synthetic organic chemicals manufacturing industry including pumps in light liquid service, compressors, pressure relief devices in gas/vapor service, sampling connection systems, open-ended valves or lines, valves in gas/vapor service and light liquid service, pumps and valves in heavy liquid service, pressure relief devices in light liquid or heavy liquid service and flanges and other connectors.

Abstract: In the Administrator's judgement emissions from process unit equipment used in the synthetic organic chemicals manufacturing industry cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. The standard requires owners or operators of the affected facilities to make the following one-time only reports: notification of the date of construction or reconstruction; notification of the anticipated and actual date of startup; notification of any physical or operational change to an existing facility which may increase the emission rate of any air pollutant to which the standard applies; and the unit identification and number of components subject to the standards. All semiannual reports are to include process unit identification, number of components leaking and not repaired, dates of process unit shutdowns and revisions to items submitted in the initial semiannual report. The source is also required to notify the Administrator of the election to use an alternative standard for valves ninety days before implementing the provision.

Burden: In the previous ICR, the hour burden for this ICR was estimated at 104,198 hours per year for 1120 respondents (1046 existing sources and 84 new sources). The number of annual responses was 2240. On average, each respondent must report 2.0 times per year with average time of 47 hours to prepare each response.

The annual cost burden is estimated to be $18,000 per year for the capital/startup purchase of monitors to perform fugitive monitoring. There are no ongoing O&M costs for these monitors.

(10) *NSPS Subparts N and Na:* NSPS for Iron and Steel Plants—Basic Oxygen Furnaces (Subparts N and Na); EPA ICR Number 1069.07; OMB Control Number 2060–0029; expiration date September 31, 2002.

Affected Entities: Entities potentially affected by this action are each basic oxygen process furnace (BOPF) in an iron and steel plant commencing construction, modification or reconstruction after the date of proposal of the standards at 40 CFR part 60, subpart N and any top-blown basic oxygen process furnace (BOPF), hot

metal transfer station or skimming station for which construction, reconstruction, or modification commenced after the date of proposal of the standards at 40 CFR part 60, subpart Na.

Abstract: In the Administrator's judgement emissions from basic oxygen furnaces cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Under 40 CFR part 60, subparts N and Na, sources are required to meet monitoring, recordkeeping and reporting requirements listed in the General Provisions (40 CFR part 60, subpart A). In addition, sources must maintain records of time and duration of each steel production cycle; time and duration of the rates or levels of any diversion of exhaust gases from the main stack; the various rates or levels of exhaust ventilation at each phase of the cycle through each duct of the secondary emission capture system; time and duration of the visible emission data sets; particulate matter concentration exiting the control device and discharge into the atmosphere; pressure loss through the venturi constriction of the scrubber continuously; and water supply pressure to the venturi scrubber control equipment continuously.

Sources are also required to provide one-time initial notifications; and to report, on a semiannual basis, on the initial performance test results and any monitoring results that average more than 10% below the average level maintained during the most recent performance test.

Burden Statement: For the previously approved ICR, the annual reporting and recordkeeping labor burden was 1,795 hours for 13 responses from 11 sources subject to the standard. This estimate was based on 11 existing BOPF shops since we assumed that of the 25 existing BOPF shops, only three of them were subject to subpart N because they were constructed after the date of proposal, and only 8 sources were subject to Subpart Na because they had modifications related to hot metal transfer stations and skimming stations that met the NSPS definition for reconstruction or modification. We assumed that one new source became subject to NSPS, subparts N and Na, within the three-year period. The frequency of the response except for initial requirements is semiannual and the average number of hours spent preparing each response is 136.

The total annualized cost burden over the three-year period in the previous ICR was estimated at $35,000. There are no capital/startup costs anticipated over the next three years because the Agency anticipates no new sources. However, annual operation and maintenance costs (O&M) for the monitoring equipment will, of course, continue. In the previously approved ICR, the O&M cost to the regulated entities was $17,400 per year.

(11) *NSPS Subpart XX:* NSPS for Bulk Gasoline Terminals (Subpart XX); EPA ICR Number 0664.07; OMB Number 2060–0006; expiration date September 30, 2002.

Affected Entities: Entities potentially affected by this action are those subject to the standards at 40 CFR Part 60, Subpart XX which includes the owners and operators of bulk gasoline terminals (BGTs) which deliver liquid products into gasoline tank trucks. A BGT is any gasoline facility which receives gasoline by pipeline, ship or barge, and has a gasoline throughput greater than 75,700 liters per day. The affected facility includes the loading arms, pumps, meters, shutoff valves, relief valves, and other piping and valves necessary to fill delivery tank trucks.

Abstract: The Agency has judged that volatile organic chemical emissions from BGTs cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Owners or operators of BGTs must make the following one-time-only reports: notification of the date of construction or reconstruction; notification of the anticipated and actual dates of startup; notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate; notification of the date of the initial performance test, and the results of the initial performance test.

Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility.

Monitoring requirements specific to bulk gasoline terminals consist mainly of identifying and documenting vapor tightness for each gasoline tank truck that is loaded at the affected facility, and notifying the owner or operator of each tank truck that is not vapor tight. The owner or operator must also perform a monthly visual inspection for liquid or vapor leaks.

Burden Statement: In the previously approved ICR, the average annual burden to the industry to meet the recordkeeping and reporting requirements was estimated at 11,420 hours per year for 40 sources reporting annually. Therefore, the number of hours spent by the sources preparing each response was 286.

There are no capital/startup or operation and maintenance costs associated with this ICR.

(12) *NSPS Subpart DDD:* NSPS for the Polymer Manufacturing Industry (Subpart DDD); EPA ICR Number 1150.06; OMB Control Number 2060–0145; expiration date September 30, 2002.

Affected Entities: Entities potentially affected by this action are subject to the standards at 40 CFR part 60, subpart DDD which manufacture polypropylene, polystyrene or polyethylene terephthalate that commence construction, modification or reconstruction after January 10, 1989.

Abstract: The Agency has determined that emissions of volatile organic compounds from polymer manufacturing facilities cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare.

Owners or operators of the affected facilities described must make the following one-time-only reports: notification of the date of construction or reconstruction; notification of the anticipated and actual dates of startup; notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate; notification of the date of the initial performance test, and the results of the initial performance test. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. The standards require periodic recordkeeping to document process information relating to the sources' ability to meet the requirements of the standard and to note the operation conditions under which compliance was achieved. In addition, owners/operators of the affected facilities are required to record periods of operation during which the performance standards are exceeded, results of flare pilot flame monitoring, all periods of operation of a boiler or process heater, and to continuously record the indication of any emission stream diverted away from the control device.

Burden Statement: In the previously approved ICR, approximately 105 existing sources were assumed to be subject to the standard and an estimated additional 10 new sources were expected to become subject to the standard in each of the three years addressed by the ICR. The total number of annual responses was estimated to be 250 and the total annual hours to fulfill

the recordkeeping and reporting requirements was 14,691. On average, each respondent must report 2.4 times per year and average of 59 hours was spent preparing each ICR. The total annual capital/startup cost was estimated at $30,000 and the estimated annual operation and maintenance cost was estimated at $735,000 for a total annual cost of $765,000.

(13) *NESHAP-MACT Subpart YY:* National Emission Standards for Hazardous Air Pollutants—Generic Maximum Achievable Control Technology Standards; EPA ICR Number 1871.03; OMB Control Number 2060–0420; expiration date September 30, 2002.

Affected Entities: Entities potentially affected by this action are those subject to the standards at 40 CFR part 63, subpart YY which produce acetal resins, acrylic and modacrylic fibers, hydrogen fluoride, and polycarbonate(s). The types of emission points regulated include storage vessels, process vents, transfer racks, and wastewater streams.

Abstract: The Agency has judged that hazardous air pollutant (HAP) emissions from the production of acetal resins (AR), acrylic and modacrylic fibers (AMF), hydrogen fluoride (HF), and polycarbonate(s) (PC) production cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. The EPA chose to regulate the AR production, AMF production, HF production, and PC production source categories under one Subpart to streamline the regulatory burden associated with the development of separate standardmaking packages. All of these source categories have five or fewer major sources and have similar emission points and MACT control requirements. This subpart is referred to as the ''generic MACT standards—Subpart YY.''

The Subpart YY generic MACT standards contain generic compliance, recordkeeping, reporting, startup, shutdown, and malfunction provisions, and also identify source category-specific control, monitoring, recordkeeping, and reporting requirements for the regulated production source categories. Subpart YY also points affected sources to meet control, testing, monitoring, inspection, recordkeeping and reporting requirements contained in other generic MACT subparts depending upon the type of emission unit and the control option selected. For example, the provisions of subpart SS are invoked for sources using closed vent systems, control devices, recovery devices, and where emissions are routed to a fuel gas system or process. Subparts TT and UU apply to equipment leaks. Subpart WW contains control, recordkeeping, and reporting requirements for storage vessels. Recordkeeping and reporting burden associated with provisions of these other four generic subparts is accounted for in the subpart YY ICR for the generic MACT standards, as they apply to the AR production, AMF production, HF production, and PC production source categories.

Monitoring, inspection, recordkeeping, and reporting requirements are used to assure and document compliance with the emission standards. Monitoring, inspection, recordkeeping and reporting requirements are, where appropriate, based on monitoring, inspection, recordkeeping and reporting requirements used in standards for sources similar to those regulated under the generic MACT. Additionally, the generic MACT standards subpart cross-references §§ 63.1 through 63.5, and §§ 63.12 through 63.15 of the General Provisions for this part, and has pulled some of the regulatory text contained in §§ 63.6 through 63.11 into the standard.

As such, affected sources are required to submit applications for approval of construction or reconstruction, submit notification of initial startup, notification of compliance status, and periodic (semiannual reports), develop startup, shutdown, and malfunction plans, and submit startup, shutdown, and malfunction reports. Sources must keep records of information relating to their compliance status, such as calculations of emission rates, records of leak detection and repair, or records of control device operating parameters as monitored from continuous monitoring systems.

Affected sources must also keep records pertaining to their assessment of applicability. These include total resource effectiveness calculations, flow rate records, total organic compound or HAP concentration records, and process change records. In cases where there are overlapping requirements for storage vessels, process vents, equipment leaks, or wastewater control, the source may choose which subpart to meet. In these cases, sources report their selection in the Notification of Compliance Status.

Burden Statement: In the previously approved ICR, the average annual burden to the industry to meet the recordkeeping and reporting requirements was estimated at 6,125 hours per year. The hourly burden is based on 10 respondents and 89 annual responses. On the average, each respondent must report 8.9 times per year and spend an average of 69 hours preparing each response.

There are no annual capital/startup costs associated with this ICR and the annual operation and maintenance cost was estimated to be $1,800 per year.

(14) *NSPS Subpart CC:* NSPS for Glass Manufacturing Plants (40 CFR part 60, subpart CC); EPA ICR Number 1131.07; OMB Control Number 2060–0054; expiration date October 31, 2002.

Affected Entities: Entities potentially affected by this action are each glass melting furnace at a glass manufacturing plant subject to the standards at 40 CFR part 60, subpart CC. health or welfare. The standards do not apply to hand glass melting furnaces, glass melting furnaces designed to produce less than 4,550 kilograms of glass per day, or all-electric melters. Experimental furnaces are not subject to the emission standards.

Abstract: In the Administrator's judgement, particulate matter from glass manufacturing plants cause or contribute to air pollution that may reasonably be anticipated to endanger public. The standards set particulate matter emission limits. Owners or operators of the affected facilities must make initial reports when a source becomes subject; conduct and report on performance testing; demonstrate and report on continuous monitor performance; maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility. Semiannual reports of excess emissions are required.

Burden Statement: In the previously approved ICR, approximately 30 sources were estimated to be subject to the standard. It was estimated that no additional sources would become subject to the standard. The average annual burden to industry from the recordkeeping and reporting requirements was estimated to be 398 hours. The total number of annual responses required by this regulation was estimated to be 61. Therefore, the frequency of response was estimated to be 2.0 responses per year and the annual public reporting and recordkeeping burden for this collection of information was estimated to average 6.5 hours per response.

The annual operations and maintenance cost was estimated at $174,000. This is based on 30 existing sources multiplied by $5,800 per years for upkeep of the monitoring device.

Dated: October 22, 2001.

Michael M. Stahl,

Director, Office of Compliance.

[FR Doc. 01–27110 Filed 10–26–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7091–1]

Agency Information Collection Activities: Proposed Collection; Comment Request; Drinking Water Customer Satisfaction Survey

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB): Drinking Water Customer Satisfaction Survey, EPA ICR number 2016.01. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before December 28, 2001.

ADDRESSES: Beth Hall, 4606, USEPA Headquarters, Office of Ground Water and Drinking Water, 1200 Pennsylvania Ave., NW., Washington DC 20460. Interested persons may obtain a copy of the ICR without charge by contacting the Safe Drinking Water Hotline at 1–800–426–4791. Information will also be available at *http://www.epa.gov/safewater/protect/features.html.*

FOR FURTHER INFORMATION CONTACT: Beth Hall, (202) 260–5553, (202) 260–0732 (fax), hall.beth@epa.gov.

SUPPLEMENTARY INFORMATION: *Affected entities:* Entities potentially affected by this action are randomly selected EPA information customers, adults 18 and older, served by public water systems.

Title: Drinking Water Satisfaction Survey EPA ICR #2016.01.

Abstract: The Office of Ground Water and Drinking Water is planning to conduct a satisfaction survey on the effectiveness of our efforts to provide drinking water information to our customers. Under the right to know provisions of the Safe Drinking Water Act, EPA is charged with helping to provide people with information about their drinking water. This survey will allow EPA to evaluate our process for disseminating this information. We will use the survey results to modify our information efforts to improve customer satisfaction. The survey will be conducted via telephone interview with 1000 randomly selected EPA information customers (adults served by public water systems) by the Gallup organization under contract to EPA. Through the survey, EPA information customers will be asked specific questions about two key sources of tap water information—consumer confidence reports (annual water quality reports) and source water assessments. Our statistical analysis of the data will assist EPA in understanding the impact of this information and whether this information is reaching to public, or if additional measures are needed to make the information available and understandable. The survey instrument is a 10 minute, voluntary telephone questionnaire covering approximately 31 questions. We intend to repeat the survey every two years so that we may evaluate the success of our right to know efforts and make adjustments accordingly. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The public reporting burden for the collection of information is estimated to average eleven (11) minutes per response. Respondents not familiar with having received EPA drinking water information will not be asked detailed questions about their satisfaction. There is no cost, other than 10 minutes or less of time, for the approximately 1000 respondents. The cost to the agency is for collecting this information including collection and analyses of survey results. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: September 7, 2001.

William R. Diamond,

Director, Drinking Water Protection Division.

[FR Doc. 01–27118 Filed 10–26–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OEI–10011; FRL–6723–4]

Fall 2001 Workshop Schedules for EPCRA/TRI Training on the New Reporting Requirements for Lead and Lead Compounds

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA will conduct full-day EPCRA/TRI Training workshops across the country during the fall of 2001. These workshops are intended to assist persons preparing their annual reports on release and other waste management activities of listed chemicals, particularly lead and lead compounds, as required under sections 313 of the Emergency Planning and Community Right-To-Know Act of 1986 (EPCRA) and section 6607 of the Pollution Prevention Act of 1990 (PPA). These reports must be submitted to EPA and designated state officials on or before July 1 of each year. A portion of each workshop will focus on preparing annual reports on chemical releases and other waste management activities under the new reporting requirements for lead and lead compounds; these reports are due by July 1, 2002.

FOR FURTHER INFORMATION CONTACT: Stephen C. DeVito, (202) 260–6185, devito.steve@epa.gov for specific information on this notice. Information concerning the EPCRA/TRI Training workshops is also available on EPA's web site at http://www.epa.gov/tri.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Notice Apply to Me?

You may find this notice applicable if you manufacture, process, or otherwise use any EPCRA section 313 listed toxic chemical, particularly lead, lead compounds, or brass, bronze or stainless steel alloys that contain lead. Potentially applicable categories and entities may include, but are not limited to:

Category	Examples of regulated entities
Industry	Metal mining, Coal mining, Manufacturing, Electricity generating facilities, Hazardous waste treatment/TSDF, Chemicals and allied products-wholesale, Petroleum bulk plants and terminals, and Solvent recovery services.
Federal Government	Federal facilities

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to find this notice of training workshops offerings applicable. Other types of entities not listed in the table may also find this notice applicable. To determine whether your facility could find this notice applicable, you should carefully examine the applicability criteria in part 372 subpart B of Title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section. You may want to attend one of these workshops if:

your facility is covered under section 313 of the Emergency Planning and Community Right-To-Know Act (EPCRA);

your facility is a federal facility that manufactures, processes, or otherwise uses section 313 listed toxic chemicals;

you prepare annual release and other waste management activity reports (i.e., Form R or Form A reports);

you are a consultant who assists in the preparation of these reports; or

you would like information on recent changes to EPCRA/TRI regulations, particularly those pertaining to lead and lead compounds.

The EPA conducts training workshops to assist you with your reporting requirements under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) and section 6607 of the Pollution Prevention Act of 1990 (PPA) or Executive Order 13148 (for federal facilities). You must submit your annual release and other waste management activity reports (i.e., Form R) if your facility meets the descriptions for the following Standard Industrial Classification (SIC) codes and qualifiers, and meets other criteria specified in part 372 of Title 40 of the Code of Federal Regulations:

Metal Mining (SIC Code 10, except 1011, 1081, and 1094);

Coal Mining (SIC Code 12, except 1241);

Manufacturing (SIC Codes 20–39)

Electricity Generating Facilities (SIC Codes 4911, 4931, and 4939—limited to facilities that combust coal and/or oil for the purpose of generating electricity for distribution in commerce);

Hazardous Waste Treatment/TSDF (SIC Code 4953—limited to facilities regulated under RCRA subtitle C, 42 U.S.C. section 6921 *et seq.*);

Chemicals and Allied Products (SIC Code 5169);

Petroleum Bulk Plants and Terminals (SIC Code 5171);

Solvent Recovery (SIC Code 7389—limited to facilities primarily engaged in solvent recovery services on a contract or fee basis); and

Federal Facilities (by Executive Order 13148).

B. What Is Presented at These Training Workshops?

The training workshops present general information on the reporting requirements of EPCRA section 313 and PPA section 6607, and detailed information on the new reporting requirements for lead and lead compounds. On January 17, 2001 EPA published a final rule entitled ''Lead and Lead Compounds; Lowering of Reporting Thresholds; Community Right-to-Know Toxic Chemical Release Reporting; Final Rule'' (**Federal Register**, 66 (11), pages 4499–4547). In this rulemaking EPA concluded that lead and lead compounds are persistent and bioaccumulative and meet EPA's criteria for classification as PBTs. With this rulemaking EPA lowered the 25,000 pound and 10,000 pound reporting thresholds to 100 pounds. The lower reporting threshold applies to lead and all listed lead compounds, except for lead contained in stainless steel, brass and bronze alloys. Thus, any facility that manufactures, processes or otherwise uses 100 pounds or more of lead or any listed lead compound(s) per year must report environmental releases of these substances to EPA annually. The first year for release reporting under this new rule is calendar year 2001. Release reports are due no later than July 1, 2002. These workshops will provide clear guidance on: the specific details of this new regulation; which facilities must file release reports for lead and lead compounds; which forms of lead and lead compounds are exempt from reporting; and methods to estimate releases of lead and lead compounds into the environment following manufacture, processing, use, or waste management activities of lead and lead compounds.

A variety of hands-on exercises along with supporting materials will be used to help you understand any reporting obligations you might have under EPCRA section 313, particularly for reporting releases and other waste management activities of lead and lead compounds. The training courses are scheduled in the fall to assist you in preparing and submitting your report(s) for the Reporting Year 2001, which are due on or before July 1, 2002.

C. How Much Time Is Required for the Training Workshops?

Each workshop will run for a full business day (i.e., from approximately 8:30 am to 5:00 pm) and will consist of two half-day modules. The first module is given in the morning and is devoted to a general discussion of EPCRA section 313 and PPA section 6607 reporting requirements, with exercises used to reinforce key concepts. The second module is given in the afternoon and is devoted to discussions on the new reporting requirements and reporting changes for lead and lead compounds, as required by the new TRI lead rule.

D. When and Where Are These Training Workshops Offered, and How Do I Register?

The dates, locations and individual contact information for training workshops are provided below. You should note that although unlikely, changes to the date or location of a

given workshop may occur. Also, if there is insufficient interest for any of the workshops, those workshops may be canceled. The Agency bears no responsibility for your decision to purchase non-refundable transportation tickets or accommodation reservations. It is advisable to verify a workshop date and location prior to registering for the workshop. You may access current training workshop schedule information via the TRI Home Page (http://www.epa.gov/tri). You may also direct specific questions regarding registration, dates and locations for specific training workshops to the contact individual listed below.

FALL 2001 EPCRA/TRI TRAINING WORKSHOP SCHEDULE[1]

Date	General location	EPA contact person
November 9, 2001	San Francisco, CA (EPA Region 9)	Adam Browning, phone: 415–744–1121, e-mail: browning.adam@epa.gov
November 13, 2001	Seattle, WA (EPA Region 10)	David Somers, phone: 206–553–2571, e-mail: somers.david@epa.gov
November 16, 2001	Kansas City, KS (EPA Region 7)	Stephen Wurtz, phone: 913–551–7315, e-mail: wurtz.stephen@epa.gov
November 21, 2001	Dallas, TX (EPA Region 6)	Warren Layne, phone: 214–665–8013, e-mail: layne.warren@epa.gov
November 27, 2001	Philadelphia, PA (EPA Region 3)	William Reilly, phone: 215–814–2072, e-mail: reilly.william@epa.gov
November 28, 2001	Atlanta, GA, (EPA Region 4)	Ezequiel Velez, phone: 404–562–9191, e-mail: velez.equiel@epa.gov
December 4, 2001	Boston, MA (EPA Region 1)	Dwight Peavey, phone: 617–918–1829, e-mail: peavey.dwight@epa.gov
December 5, 2001	Chicago, IL (EPA Region 5)	Thelma Codina, phone: 312–886–6219, e-mail: codina.thelma@epa.gov

[1] This schedule may change without further notice. A schedule reflecting any changes to this notice will be posted at http://www.epa.gov/tri.

E. How Much Will the Training Course Cost?

There are generally no registration fees for the Training Workshops. If registration fees are required you will be notified at the time of registration. You should check with the contact person of a particular workshop for information regarding registration fees.

List of Subjects

Environmental protection, Community right-to-know, Reporting and recordkeeping requirements, Toxics release inventory.

Dated: October 18, 2001.

Elaine G. Stanley,

Director, Office of Information Analysis and Access.

[FR Doc. 01–27119 Filed 10–26–01; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7091–7]

Proposed Settlement Under Section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed administrative settlement and opportunity for public comment.

SUMMARY: The United States Environmental Protection (EPA) is proposing to enter into an administrative settlement to resolve claims under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended. Notice is being published to inform the public of the proposed settlement and of the opportunity to comment. This Settlement is intended to resolve Piscataway Associates' and Piscataway Associates Properties Corp's. liability for response costs incurred by EPA at the Chemical Insecticide Corporation Site in Edison Township, New Jersey.

DATES: Comments must be provided on or before November 28, 2001.

ADDRESSES: Comments should be addressed to the Environmental Protection Agency, Office, of Regional Counsel, 290 Broadway—17th Floor, New York, NY 10007 and should refer to: In the Matter of the Chemical Insecticide Corporation Site, EPA Index No. II CERCLA–02–2000–2338.

FOR FURTHER INFORMATION CONTACT: Environmental Protection Agency, Office of Regional Counsel, 290 Broadway—17th Floor, New York, NY 10007, Attention: Juan Fajardo, Esq. (212) 637–3132.

SUPPLEMENTARY INFORMATION: In accordance with section 122(h)(i)(1) of CERCLA, notice is hereby given of a proposed administrative settlement concerning the Chemical Insecticide Corporation Site located in Edison Township, New Jersey. Section 122(h) of CERCLA provides EPA with the authority to consider, compromise and settle certain claims for costs incurred by the United States.

Piscataway Associates and Piscataway Associates Properties Corp. will be notified by EPA to place the property located at 30 Whitman Avenue, Edison Township, New Jersey (Property) for

sale with a commercial real estate brokerage firm acceptable to EPA. Proceeds from the sale of the Property will be used to pay reasonably incurred closing costs as well as federal and state taxes owed on the proceeds of the sale. Thereafter, Piscataway Associates and Piscataway Associates Properties Corp. shall pay EPA 90% of the remaining sale proceeds as reimbursement of response costs incurred by EPA at the Chemical Insecticide Corporation Site.

A copy of the proposed administrative settlement, as well as background information relating to the settlement, may be obtained in person or by mail from EPA's Region II Office of Regional Counsel, 290 Broadway—17th Floor, New York, NY 100007.

Dated: September 27, 2001.

William J. Muszynki,

Acting Regional Administrator, Region 2.

[FR Doc. 01–27117 Filed 10–26–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENT PROTECTION AGENCY

[FRL–7092–5]

Proposed Past Cost Administrative Settlement Under Section 122(h)(1) of the Comprehensive Environmental Response Compensation and Liability Act; In the Matter of M Metal Site, Indianapolis, Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; 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 response costs concerning the M Metal site in Indianapolis, Indiana, with PSI Energy, Inc (''PSI''). The settlement requires PSI to pay $100,000.00 to the Hazardous Substance Superfund.

Under the terms of the settlement, PSI agrees to pay the settlement amount. In exchange for its payment, the United States covenants not to sue or take administrative action pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a), to recover costs that the United States paid in connection with the Site through June 20, 2001. In addition, PSI is entitled to protection from contribution actions or claims as provided by sections 113(f) and 122(h)(4) of CERCLA, 42 U.S.C. 9613(f) and 9622(h)(4), for response costs incurred by any person at the Site through June 20, 2001.

For thirty (30) days after 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 EPA's Region 5 Office at 77 West Jackson Boulevard, Chicago, Illinois 60604, and at the Indianapolis Public Library in Indianapolis, Indiana.

DATES: Comments must be submitted on or before November 28, 2001.

ADDRESSES: The proposed settlement is available for public inspection at EPA's Record Center, 7th floor, 77 W. Jackson Blvd., Chicago, Illinois 60604. A copy of the proposed settlement may be obtained from Mark Geall, Associate Regional Counsel, U.S. EPA, Mail Code C–14J, 77 W. Jackson Blvd., Chicago, Illinois 60604, telephone (312) 353–9538. Comments should reference the M Metal site, Indianapolis, Indiana, and EPA Docket No. V–W–01–C–649, and should be addressed to Mark Geall, Associate Regional Counsel, U.S. EPA, Mail Code C–14J, 77 W. Jackson Blvd., Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Mark Geall, Associate Regional Counsel, U.S. EPA, Mail Code C–14J, 77 W. Jackson Blvd., Chicago, Illinois 60604, telephone (312) 353–9538.

Authority: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601, *et. seq.*

Dated: October 11, 2001.

Margaret Guerriero,

Acting Director, Superfund Division.

[FR Doc. 01–27109 Filed 10–26–01; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7092–6]

Notice of Proposed Administrative Order on Consent for Remedial Investigation/Feasibility Study Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122 (h) 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 order on consent concerning the Molycorp, Inc. Site, with potentially responsible party Molycorp, Inc.

The order requires the settling party to prepare and perform a remedial investigation and feasibility study (RI/FS) for the Molycorp, Inc. Site in Taos County, New Mexico. Molycorp must also reimburse the Environmental Protection Agency (EPA or the Agency), for all past response costs and all response costs incurred in connection with the RI/FS, subject to the reservations outlined in the order.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the cost recovery component of the order. The Agency will consider all comments received and may modify or withdraw its consent to the cost recovery component of the order if comments received disclose facts or considerations which indicate that the cost recovery component of the order is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at 1445 Ross Avenue, 7th Floor, Dallas, Texas 75202–2733.

DATES: Comments must be submitted on or before November 28, 2001.

ADDRESSES: The proposed order and additional background information relating to the order are available for public inspection at 1445 Ross Avenue, 7th Floor, Dallas, Texas 75202–2733. A copy of the proposed order may be obtained from Mark Purcell, Remedial Project Manager, 1445 Ross Avenue, 6SF–LP, Dallas, Texas 75202–2733 or by calling (214) 665–6707. Comments should reference the Molycorp, Inc. Superfund Site, Taos County, New Mexico, and EPA Docket Number 06–07–01, and should be addressed to Mark Purcell at the address listed above.

FOR FURTHER INFORMATION CONTACT: Michael Boydston, Assistant Regional Counsel, US Environmental Protection Agency, 1445 Ross Avenue, 6 RC–SF, Dallas, Texas 75202–2733 or call (214) 665–8063.

Dated: October 17, 2001.

Lawrence E. Starfield,

Acting Regional Administrator, Region 6.

[FR Doc. 01–27112 Filed 10–26–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7091–8]

Notice of Availability of Draft NPDES General Permits for Construction Dewatering Activity Discharges in the States of Massachusetts and New Hampshire

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Availability of the Draft NPDES General Permits MAG070000 and NHG070000.

SUMMARY: The Director of the Office of Ecosystem Protection, Environmental Protection Agency—New England (EPA–NE), is today providing notice of the availability of the Draft National Pollutant Discharge Elimination System (NPDES) general permit for construction dewatering activity discharges to certain waters of the States of Massachusetts and New Hampshire as authorized by section 301(a) of the Clean Water Act. See also 40 CFR 122.28. The existing general permit was issued by EPA–NE and published at 61 FR 19284, May 1, 1996. The general permit expired on May 01, 2001. The reissued draft NPDES general permit establishes Notice of Intent (NOI) requirements, effluent limitations, standards, prohibitions and management practices for construction dewatering activity discharges. Construction dewatering activity is defined as pumped or drained discharges of groundwater and/or stormwater from excavations or other points of accumulation associated with a construction activity.

Owners and/or operators of sites that discharge groundwater and/or stormwater from construction dewatering activities, including those currently authorized to discharge under the expired general permit, will be required to submit an NOI to EPA–NE to be covered by the appropriate general permit and will receive a written notification from EPA–NE of permit coverage and authorization to discharge under the general permit. The general permit does not cover new sources as defined under 40 CFR 122.2.

DATES: For comment period: interested persons may submit comments on the draft general permit as part of the administrative record to the EPA–NE, at the address given below, no later than November 28, 2001.

ADDRESSES: The draft permit is based on an administrative record available for public review at EPA–NE, Office of Ecosystem Protection (CPE), 1 Congress Street, Suite 1100, Boston, Massachusetts 02114–2023. Written comments may be hand delivered or mailed to this address. Electronic comments may be e-mailed to *frawley.austine@EPA.GOV.*

FOR FURTHER INFORMATION CONTACT: Additional information concerning the draft permit may be obtained between the hours of 9:00 a.m. and 5:00 p.m. Monday through Friday excluding holidays from: Austine Frawley, EPA–NE, Office of Ecosystem Protection, NPDES Permit Unit; One Congress Street, Boston, MA 02114–2023; telephone: 617–918–1065; e-mail: *frawley.austine@EPA.GOV.*

SUPPLEMENTARY INFORMATION: The Draft NPDES General Permit may be viewed over the Internet via the EPA–NE web site *www.epa.gov/region01/topics/water/permits.html.* To obtain a hard copy of the document, please call, e-mail or write to Ms. Frawley at the addresses listed above. The draft general permit includes FACT SHEET AND SUPPLEMENTARY INFORMATION sections that set forth principal facts and the significant factual, legal and policy questions considered in the development of the draft permit. A reasonable fee may be charged for copying requests.

When the general permit is reissued, it will be published in its entirety in the **Federal Register**. The general permit will be effective on the date specified in the **Federal Register** and it will expire five years from the date that the final permit is published in the **Federal Register**.

Dated: October 17, 2001.

Robert W. Varney,

Regional Administrator, EPA—New England.

[FR Doc. 01–27111 Filed 10–26–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 23, 2001.

A. Federal Reserve Bank of Cleveland (Stephen J. Ong, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. Community Trust Bancorp., Inc., Pikeville, Kentucky; to acquire 100 percent of the voting shares of Citizens National Bank & Trust of Hazard, Hazard, Kentucky.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Brighton Bancorp, Inc., Brighton, Tennessee; to acquire 81.34 percent of the voting shares of Parkin Bancorp, Inc., Parkin, Arkansas, and thereby indirectly acquire voting shares of First State Bank, Parkin, Arkansas.

Board of Governors of the Federal Reserve System, October 24, 2001.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 01–27169 Filed 10–26–01; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages

either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 23, 2001.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. East Texas Financial Corporation, Kilgore, Texas, and East Texas Delaware Holdings, Wilmington, Delaware; to acquire 55 percent of the voting shares of East Texas Financial Services, Inc., Tyler, Texas, and thereby indirectly acquire First Federal Savings and Loan Association, Tyler, Texas, and engage in operating a savings association, pursuant to § 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, October 24, 2001.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 01–27170 Filed 10–26–01; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Government in the Sunshine; Meeting Notice

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Wednesday, October 31, 2001.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 2lst Streets NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda: Because of the routine nature, no discussion of the following item is anticipated. The matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Proposed 2002 Private Sector Adjustment Factor.

Discussion Agenda:

2. Proposed 2002 fee schedules for priced services.

3. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office and copies may be ordered for $6 per cassette by calling 202–452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Michelle A. Smith, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 for a recorded announcement of this meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement. (The Web site also includes procedural and other information about the open meeting.)

Dated: October 24, 2001.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 01–27203 Filed 10–25–01; 10:56 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Government in the Sunshine; Meeting Notice

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIMES AND DATE: Approximately 10:30 a.m., Wednesday, October 31, 2001, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED: 1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Michelle A. Smith, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: October 24, 2001.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 01–27204 Filed 10–25–01; 10:56 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0262]

Submission for OMB Review; Comment Request Entitled Identification of Products with Environmental Attributes

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice of request for extension to previously approved OMB clearance. (3090–0262).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration, Office of Acquisition Policy has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning the Identification of Products with Environmental Attributes.

DATES: Comment Due Date: December 28, 2001.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: Ed Springer, GSA Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503, and a copy to Stephanie Morris, General Services Administration, Acquisition Policy Division, 1800 F Street, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Beverly Cromer, Office of Acquisition Policy (202) 501–1224.

SUPPLEMENTARY INFORMATION:

A. Purpose

The General Services Administration is requesting the Office of Management and Budget (OMB) to review and

approve information collection, 3090–0262, concerning the Identification of Products with Environmental Attributes.

B. Annual Reporting Burden

Respondents: 9,200.
Annual Responses: 9,200.
Burden Hours: 46,000.

Obtaining Copies of Proposals

Requester may obtain a copy of the proposal from the General Services Administration, Regulatory Secretariat (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 3090–0262, Identification of Products with Environmental Attributes.

Dated: October 15, 2001.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 01–27101 Filed 10–26–01; 8:45 am]

BILLING CODE 6820–61–M

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0246]

Submission for OMB Review; Comment Request Entitled Packing List Clause

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice of request for extension to previously approved OMB Clearances (3090–0246).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration, Office of Acquisition Policy has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning the General Services Administration Acquisition Regulation (GSAR) Packing List Clause. A request for public comments was published at 66 FR 43014, August 16, 2001. No comments were received.

DATES: Comment Due Date: November 28, 2001.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: Ed Springer, GSA Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503, and a copy to Stephanie Morris, General Services Administration, Acquisition Policy Division, 1800 F Street, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Beverly Cromer, Office of Acquisition Policy, (202) 208–6750.

SUPPLEMENTARY INFORMATION:

A. Purpose

The General Services Administration is requesting the Office of Management and Budget (OMB) to review and approve information collection, 3090–0246, concerning the GSAR Packing List clause. This clause requires a contractor to include a packing list that verifies placement of an order and identifies the items shipped. In addition to information contractors would normally include on packing lists, the identification of cardholder name, telephone number and the term ''Credit Card'' is required.

B. Annual Reporting Burden

Respondents: 4,000.
Annual Responses: 931,219.
Burden Hours: 7,760.

Obtaining Copies of Proposals

Requester may obtain a copy of the proposal from the General Services Administration, Regulatory Secretariat (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 3090–0246, GSAR Packing List Clause.

Dated: October 22, 2001.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 01–27102 Filed 10–26–01; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

CDC/ATSDR Educational Loan Repayment Program

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (DHHS).

ACTION: Notice.

SUMMARY: This notice announces the implementation of the CDC/ATSDR Educational Loan Repayment Program (ELRP) intended to assist in the recruitment and retention of highly qualified health professionals for hard-to-fill positions. The ELRP is a pilot program and will be used for the period permitted by legislation (currently September 30, 2002).

EFFECTIVE DATE: November 1, 2001.

FOR FURTHER INFORMATION CONTACT: Dale J. Indergaard, Compensation Program Manager, CDC, Human Resources Management Office, 4770 Buford Hwy, Mailstop K–07, Atlanta, Georgia, 30341, telephone (770) 488–1756, e-mail: *dxi0@cdc.gov.*

SUPPLEMENTARY INFORMATION: The Centers for Disease Control and Prevention (CDC) intends to implement an Educational Loan Repayment Program (ELRP) authorized under 42 U.S.C. sect. 247b–7 as a recruitment and retention incentive for highly qualified health professionals in hard-to-fill positions. The ELRP will be implemented on a pilot basis beginning November 1, 2001. During this time frame, up to nine (9) loans to assist in recruitment may be considered for repayment. A participant must have received a bonafide offer of employment from CDC to be eligible to participate in the ELRP. Additionally, loans to assist in the retention of current CDC employees will be considered. Approximately April 1, 2002, CDC will conduct an analysis of the effectiveness of the ELRP in its recruitment and retention efforts and will determine whether continuation of the ELRP is warranted.

Under the ELRP, a maximum of $35,000 a year (plus 39 per cent of total loan repayment for tax credit as loan repayment benefits represent taxable income) may be repaid toward a participant's outstanding eligible educational debt. The participant is responsible for a loan repayment equal to a total of 10 percent of his/her annual CDC base salary, while the ELRP will repay at a rate of ⅓ of the remaining repayable debt (up to the maximum allowable) for each of the three years. The participant must sign a contract agreeing to remain employed by CDC for a period of not less than three years. Failure to complete the minimum three-year service agreement period will be considered a breach of contract and will subject the ELRP participant to assessment of monetary penalties and damages. Actual loan repayment amounts are based on the proportion of a participant's qualifying debt relative to his/her beginning CDC base salary.

Overall ELRP eligibility requirements:

a. Be a citizen of the United States;

b. Hold a relevant Doctoral degree or equivalent;

c. Have been selected for a vacant position or is currently assigned to a covered hard-to-fill health professional occupational series at CDC/ATSDR; and,

d. Have a qualifying educational debt in excess of 20 percent of their annual CDC base salary.

Dated: October 23, 2001.

Joseph R. Carter,

Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 01–27098 Filed 10–26–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Office of AIDS Research Advisory Council.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Office of AIDS Research Advisory Council.

Date: November 7, 2001.

Time: 8:30 a.m. to Adjournment.

Agenda: International research to develop AIDS therapeutic approaches for resource-poor areas of the world.

Place: Building 31, Conference Room 6C10, Bethesda, MD 20892.

Contact Person: Linda J. Reck, Chief, Program Planning and Evaluation, Office of Aids Research, National Institutes of Health, Building 2, Room 4W01, Bethesda, MD 20892, (301) 402–8655, *reck@od.nih.gov.*

Information is also available on the Institute's/Center's home page: www.nih.gov/od/oar/index.htm, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program, National Institutes of Health, HHS)

Dated: October 23, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–27146 Filed 10–26–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meeting of the National Cancer Institute Board of Scientific Advisors.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended to disclosure information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Board of Scientific Advisors.

Date: November 13–14, 2001.

Open: November 13, 2001, 8:30 am to 5:15 pm.

Agenda: Director's Report; Ongoing and New Business; Reports of Program Review Group(s); and Budget Presentation; Reports of Special Initiatives; RFA and RFP Concept Reviews; and Scientific Presentations.

Place: National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing, 6 Floor, Conference Room 10, Bethesda, MD 20892.

Closed: November 13, 2001, 5:20 pm to Recess.

Agenda: To review and evaluate personnel issues.

Place: National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing, 6 Floor, Conference Room 10, Bethesda, MD 20892.

Open: November 14, 2001, 9 am to 12:15 pm.

Agenda: Reports of Special Initiatives; RFA and RFP Concept Reviews; and Scientific Presentations.

Place: National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing, 6 Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Paulette S. Gray, Ph.D., Executive Secretary, Deputy Director, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8141, Bethesda, MD 20892, (301) 496–4218.

This notice is being published less than 15 days prior to the meeting due to the scheduling conflicts.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/bsa.htm* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: October 23, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 01–27154 Filed 10–26–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel. Community Clinical Oncology Program/ Minority-Based Community Clinical Oncology Program.

Date: November 16, 2001.

Time: 8:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute, 6130 Executive Boulevard, Conference Room F, Rockville, MD 20852.

Contact Person: Timothy C. Meeker, MD, Scientific Review Administrator, Special Referral and Resources Branch, Division of Extramural Activities, National Cancer

Institute, 6116 Executive Boulevard, Room 8088, Rockville, MD 20852, 301/594–1279.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: October 23, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–27155 Filed 10–26–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Alternative Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Complementary & Alternative Medicine Special Emphasis Panel NCCAM SEP W–01.

Date: November 28, 2001.

Time: 8: am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Lawrence R Haller, National Center for Complementary and Alternative Medicine, National Institutes of Health, 6707 Democracy Boulevard, Rm. 106, Bethesda, MD 20892–5495, (301) 402–9011, ih194t@nih.gov.

Dated: October 23, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–27152 Filed 10–26–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Alternative Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel.

Date: December 9–11, 2001.

Time: 7 pm to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Cecelia Maryland, Office of Scientific Review, National Center for Complementary and Alternative Medicine, National Institutes of Health, 6707 Democracy Blvd, Ste. 106, Bethesda, MD 20892, (301) 451–6331, *cm344f@nih.gov*.

Dated: October 23, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–27153 Filed 10–26–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel.

Date: November 29, 2001.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Ramada Inn Rockville, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Jeanette M Hosseini, PhD, Scientific Review Administrator, Division of Extramural Research, National Eye Institute, Bethesda, MD 20892, 301–496–5561.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: October 23, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–27144 Filed 10–26–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

Date: November 29, 2001.

Time: 1 pm to 4 pm.

Agenda: To review and evaluate grant applications.

Place: 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Andrea Sawczuk, PhD, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–0660.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: October 23, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–27145 Filed 10–26–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NIAID.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the NATIONAL INSTITUTE OF ALLERGY AND INFECTIOUS DISEASES, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIAID.

Date: December 10–12, 2001.

Time: December 10, 2001, 8 am to adjournment on December 12.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Building 4, Conference Room 433, 4 Center Drive, Bethesda, MD 20892.

Contact Person: Thomas J. Kindt, PhD, Director, Division of Intramural Research, National Inst. of Allergy & Infectious Diseases, Building 10, Room 4A31, Bethesda, MD 20892, 301–496–3006, *tk9c@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: October 23, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–27147 Filed 10–26–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel. ZDK1 GRB–5(J2).

Date: November 29, 2001.

Time: 3 pm to 5 pm.

Agenda: To review and evaluate grant applications.

Place: 6707 Democracy Blvd., Room 756, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Francisco O. Calvo, PhD., Chief, Review Branch, DEA, NIDDK, Room 752, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–8897.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel. ZDK1 GRB–4(J1).

Date: November 30, 2001.

Time: 8:30 am to 3 pm.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites—BWI, 1300 Concourse Drive, Lithicum, MD 21090.

Contact Person: William E. Elzinga, PhD., Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 747, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–8895.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel. ZDK1 GRB–4(J2).

Date: December 5–6, 2001.

Time: 7:00 pm to 7:00 pm.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites—BWI, 1300 Concourse Drive, Lithicum, MD 21090.

Contact Person: Carolyn Miles, PhD., Scientific Research Administrator, Review branch, DEA, NIDDK, Room 755, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892, (301) 594–7791.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel. ZDK1 GRB–4(J3).

Date: December 6–7, 2001.

Time: 7:30 pm to 6 pm.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites, Lithicum, MD 21090.

Contact Person: William E. Elzinga, PhD., Scientific Review Administrator, Review branch, DEA, NIDDK, Room 747, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–8895.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and hematology Research, National Institutes of Health, HHS)

Dated: October 23, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–27148 Filed 10–26–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel.

Date: November 16, 2001.

Time: 10 am to 11:30 am.

Agenda: To review and evaluate grant applications.

Place: 6700-B Rockledge, Room 2223, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Nancy B. Saunders, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2223, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, 301 496–2550, *ns120v@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: October 23, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–27149 Filed 10–26–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 19, 2001.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.

Contact Person: Michael A. Lang, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7850, Bethesda, MD 20892, (301) 435–1265.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 19, 2001.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Robert T. Su, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4134, MSC 7840, Bethesda, MD 20892, (301) 435–1195.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 19, 2001.

Time: 8:30 am to 3 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, NW., Washington, DC 20007.

Contact Person: Jerrold Fried, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4126, MSC 7802, Bethesda, MD 20892, (301) 435–1777

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 20, 2001.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Joseph Kimm, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5178, MSC 7844, Bethesda, MD 20892, (301) 435–1249.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 20, 2001.

Time: 10 am to 11 am.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Russell T. Dowell, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7818, Bethesda, MD 20892, (301) 435–1169, *dowellr@drg.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 27, 2001.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn-Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Gamil C. Debbas, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7844, Bethesda, MD 20892, (301) 435–1018.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 27–29, 2001.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: The Hanover Inn, the corner of Main Street and East Wheelock, Hanover, NH 03755.

Contact Person: Tracy E. Orr, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5118, Bethesda, MD 20892, (301) 435–1259, *orrt@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 27, 2001.

Time: 1 pm to 2 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Martin L. Padarathsingh, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7804, Bethesda, MD 20892, (301) 435–1717.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 27, 2001.

Time: 2 pm to 3 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Stephen M. Nigida, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4112, MSC 7812, Bethesda, MD 20892, (301) 435–3565.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 28–29, 2001.

Time: 8:30 am. to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn-Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Jay Cinque, MSC, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7846, Bethesda, MD 20892, (301) 435–1252.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 28, 2001.

Time: 9:30 am to 10:30 am.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Everett E. Sinnett, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2178, MSC 7818, Bethesda, MD 20892, (301) 435–1018, *sinnett@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 29, 2001.

Time: 8 am to 12 pm.

Agenda: To review and evaluate grant applications.

Place: Swissotel Washington, The Watergate, 2560 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Teresa Nesbitt, DVM, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5110, MSC 7854, Bethesda, MD 20892, (301) 435–1172.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 29–30, 2001.
Time: 8:30 am to 4 pm.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Ronald J. Dubois, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4156, MSC 7806, Bethesda, MD 20892, (301) 435–1722.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 29–30, 2001.
Time: 9:30 am to 1 pm.
Agenda: To review and evaluate grant applications.
Place: The River Inn, 924 25th Street, Washington, DC 20037.
Contact Person: Cathleen L. Cooper, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4208, MSC 7812, Bethesda, MD 20892, (301) 435–3566, *cooper@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 29, 2001.
Time: 3:30 pm to 5 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Everett E. Sinnet, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2178, MSC 7818, Bethesda, MD 20892, (301) 435–1016, *sinnett@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 30, 2001.
Time: 8 am to 5 pm.
Agenda: To review and evaluate grant applications.
Place: Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.
Contact Person: Michael A. Land, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7850, Bethesda, MD 20892, (301) 435–1265.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: November 30, 2001.
Time: 1 pm to 3:30 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: John Bishop, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1018.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 23, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–27150 Filed 10–26–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Cancellation of Meeting

Notice is hereby given of the cancellation of the Center for Scientific Review Special Emphasis Panel, October 29, 2001, 11 am to October 29, 2001, 12 pm, Latham Hotel, 3000 M Street, NW., Washington, DC 20007–3701 which was published in the **Federal Register** on October 15, 2001, 66 FR 52441–52444.

The meeting is cancelled due to the applications being transferred to another meeting.

Dated: October 23, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–27151 Filed 10–26–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4650–N–80]

Notice of Submission of Proposed Information Collection to OMB HOPE VI Application Requirements (Data Forms, Budget, etc), Reporting, Procurement

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* November 28, 2001.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval (2577–0208) number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail Wayne_Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: HOPE VI Application Requirements (Data Forms, Budget, etc.,), Reporting Procurement.

OMB Approval Number: 2577–0208.

Form Numbers: HUD–52860–A, HUD–52825–A.

Description of the Need For The Information and Its Proposed Use: HOPE VI information collections are required in connection with the HOPE VI, program and its Notice of Funding Availability (as published in the Federal Register), particularly its Revitalization and Demolition Applications, including related forms, its quarterly reporting process, and its certification of mixed-finance procurement.

Respondents: State, Local or Tribal Government.

Frequency of Submission: On occasion.

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Reporting Burden	80		1		372		29,773

Total Estimated Burden Hours: 29,773.

Status: Reinstatement, without change.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: October 23, 2001.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 01–27171 Filed 10–26–01; 8:45 am]

BILLING CODE 4210–72–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4650–N–78]

Notice of Submission of Proposed Information Collection to OMB Third Round Designation of Seven Urban Empowerment Zones

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* November 28, 2001.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval (2506–0148) number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail Wayne_Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Third Round Designation of Seven Urban Empowerment Zones.

OMB Approval Number: 2506–0148.

Form Numbers: HUD–40003.

Description of the need for the Information and its Proposed Use: Eligible applications apply to HUD and USDA for designation of an eligible area in their jurisdiction as an Empowerment Zone. Applications are units of local government and states, applying jointly.

Respondents: State, Local or Tribal Government.

Frequency of Submission: On occasion.

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Reporting Burden	176		.55		63		6,114

Total Estimated Burden Hours: 6,114.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: October 22, 2001.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 01–27172 Filed 10–26–01; 8:45 am]

BILLING CODE 4210–72–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4650–N–79]

Notice of Submission of Proposed Information Collection to OMB; Designation of Round III Empowerment Zones and Renewal Communities

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* November 28, 2001.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval (2506–0173) number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-

mail *Wayne__Eddins@HUD.gov*; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Designation of Round III Empowerment Zones and Renewal Communities.

OMB Approval Number: 2506–0173.

Form Numbers: HUD–40005.

Description of the Need for the Information and Its Proposed Use: Governs the designation of Round III Empowerment Zones (EZs) and Renewal Communities (RCs) nominated by States and local governments. The designation of an area as an EZ or an RC provides special Federal income tax treatment for businesses located within the area.

Respondents: State, Local or Tribal Government.

Frequency of Submission: On occasion.

Reporting Burden:

Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
200		.47		99		9,360

Total Estimated Burden Hours: 9,360.

Status: Reinstatement, with change.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: October 23, 2001.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 01–27173 Filed 10–26–01; 8:45 am]

BILLING CODE 4210–72–M

DEPARTMENT OF THE INTERIOR

[FA 108 2810 HT 001R]

Office of Wildland Fire Coordination; Call for Nominations for the Joint Fire Science Program Stakeholder Advisory Group

AGENCY: Office of Wildland Fire Coordination, Interior.

ACTION: Notice of Joint Fire Science Program Stakeholder Advisory Group call for nominations.

SUMMARY: The purpose of this notice is to solicit public nominations for two members to the Joint Fire Science Program Stakeholder Advisory Group.

DATES: Nominations should be submitted to the address listed below under **ADDRESSES** no later than November 28, 2001.

ADDRESSES: Send nominations to Dr. Bob Clark, Joint Fire Science Program, National Interagency Fire Center, 3833 S. Development Ave., Boise, ID 83705.

FOR FURTHER INFORMATION CONTACT: Tim Hartzell, Designated Federal Official; telephone (202) 606–3211; fax: (202) 606–3150; e-mail: *Tim—Hartzell@blm.gov.*

SUPPLEMENTARY INFORMATION: Recently, two members of the Joint Fire Science Program Stakeholder Advisory Group have resigned. We are seeking to fill vacancies left by these two committee members: one who represented an Indian Tribe, and one who represented a non-profit wildland management research group. In the interest of maintaining balance on the Joint Fire Science Program Stakeholder Advisory Group, we are specifically seeking to replace those two members with persons from the same types of groups. However, we will consider all nominations we receive from all types of stakeholders.

Additional information about the Joint Fire Science Program Stakeholder Advisory Group, including the charter that established it, may be found on the World Wide Web at *http://www.nifc.gov/joint__fire__sci/SHAG/facaind.htm*

Dated: October 12, 2001.

Tim Hartzell,

Director, Office of Wildland Fire Coordination.

[FR Doc. 01–27066 Filed 10–26–01; 8:45 am]

BILLING CODE 4310–DW–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Delaware & Lehigh National Heritage Corridor Commission Meeting

AGENCY: Office of the Secretary, Department of Interior.

ACTION: Notice of Meeting.

SUMMARY: This notice announces an upcoming meeting of the Delaware & Lehigh National Heritage Corridor Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Public Law 92–463).

Meeting Date and Time: Friday, November 9, 2001, Time 1:30 p.m. to 4 p.m.

Address: Redevelopment Authority of the County of Bucks, One North Wilson Avenue, Bristol, PA 19007.

The agenda for the meeting will focus on implementation of the Management Action Plan for the Delaware and Lehigh National Heritage Corridor and State Heritage Park. The Commission was established to assist the Commonwealth of Pennsylvania and its political subdivisions in planning and implementing an integrated strategy for protecting and promoting cultural, historic and natural resources. The Commission reports to the Secretary of the Interior and the Congress.

SUPPLEMENTARY INFORMATION: The Delaware & Lehigh National Heritage Corridor Commission was established by Pub. L. 100–692, November 18, 1988 and extended through Pub. L. 105–355, November 13, 1998.

FOR FURTHER INFORMATION CONTACT: C. Allen Sachse, Executive Director, Delaware & Lehigh National Heritage Corridor Commission, 10 E. Church Street, Room A–208, Bethlehem, PA 18018, (610) 861–9345.

Dated: October 23, 2001.

C. Allen Sachse,

Executive Director, Delaware & Lehigh National Heritage Corridor Commission.

[FR Doc. 01–27099 Filed 10–26–01; 8:45 am]

BILLING CODE 6820–PE–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–910–01–1020–PG]

New Mexico Resource Advisory Council Meeting

AGENCY: The Bureau of Land Management, Department of the Interior.

ACTION: Notice of Council Meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C. Appendix 1, The Department of the Interior, Bureau of Land Management (BLM), announces a meeting of the New Mexico Resource Advisory Council (RAC). New Mexico Resource Advisory Council Meetings are planned in conjunction with the representative of the Governor of the State of New Mexico; the Office of the Lieutenant Governor.

DATES: The meeting will be held on December 13 and 14, 2001, with an optional Field Trip preceding on Wednesday, December 12. The meeting will begin at 8 a.m. and end by 5 p.m. both days.

ADDRESSES: The meeting will take place at the Hilton Inn, 705 South Telshor, Las Cruces, NM 88011.

AGENDA: The draft agenda for the RAC meeting on Wednesday, October 3, includes agreement on the meeting agenda, any RAC comments on the draft minutes of the last RAC meeting which was held on October 3 and 4, 2001, in Taos, New Mexico, and a check-in from the RAC members. Main topics of discussion will be Off Highway Vehicle (OHV) use on public lands and implementation of the Standards and Guidelines for Grazing. Reports from the seven Field Offices and from the two established subcommittees will be presented at various times throughout the two day meeting. The two established RAC subcommittees may have late afternoon or evening meetings on Wednesday, December 12 or on Thursday, December 13. The exact time and location of possible subcommittee meetings will be established by the chairperson of each subcommittee and be available to the public at the front desk of the hotel on those two days.

The meeting is open to the public, and starting at 2:45 p.m. on Thursday, December 13, 2001, there will be an additional 15 minute Public Comment Period for members of the public who are not able to be present to address the RAC during the regular two hour Public Comment Period on Friday, December 14, from 10 a.m. to 12 noon. The RAC may reduce or extend the end time of 12 noon depending on the number of people wishing to address the RAC.

A RAC assessment of the current meeting and development of draft agenda items and selection of a location for the next RAC meeting will take place Friday afternoon. On Friday, December 14, the ending time of the meeting may be changed depending on the work remaining for the RAC.

FOR FURTHER INFORMATION CONTACT: Mary White, New Mexico State Office, Office of External Affairs, Bureau of Land Management, 1474 Rodeo Road, P.O. Box 27115, Santa Fe, New Mexico 87502–0115, telephone (505) 438–7404.

SUPPLEMENTARY INFORMATION: The purpose of the Resource Advisory Council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with the management of public lands. The Council's responsibilities include providing advice on long-range planning, establishing resource management priorities and assisting the BLM to identify State and regional standards for rangeland health and guidelines for grazing management.

Dated: October 10, 2001.

Michelle J. Chávez,

State Director.

[FR Doc. 01–27095 Filed 10–26–01; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–930–1920–ET–4064; CACA 43172]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; California.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Forest Service proposes to withdraw approximately 44,575 acres of National Forest System lands in the San Bernardino National Forest to maintain and conserve habitat for listed threatened and endangered species. This notice closes the lands for up to 2 years from mining. The lands will remain open to mineral leasing and the Materials Act of 1947.

DATES: Comments and requests for a public meeting must be received by January 28, 2002.

ADDRESSES: Brent Handley, Director, Lands & Minerals Management, Forest Service, Pacific Southwest Region, 1323 Club Drive, Vallejo, California 94592–1110.

FOR FURTHER INFORMATION CONTACT: Scott Eliason, San Bernardino National Forest, 909–866–3437, extension 3904.

SUPPLEMENTARY INFORMATION: On April 27, 2001, the San Bernardino National Forest, Forest Service, filed an application to withdraw the following described National Forest System lands from location and entry under the United States mining laws (30 U.S.C. Ch. 2), subject to valid existing rights:

San Bernardino Meridian

T. 1 N., R. 1 E.,
- Sec. 1, lots 1 thru 4, inclusive, E½SE¼;
- Sec. 2, lots 1 thru 4, inclusive, SW¼NW¼, NE¼SW¼;
- Sec. 3, lots 1 and 2, SE¼NE¼, NE¼SE¼;
- Sec. 5, SE¼NW¼, NE¼SW¼, SW¼SW¼;
- Sec. 7, lots 3 and 4, NE¼NE¼, SW¼NE¼, SE¼NW¼, NE¼SW¼;
- Sec. 12, S½SE¼;
- Sec. 20, W½NW¼;
- Sec. 22, NE¼SW¼, portion of SE¼SW¼ and portion of SE¼, both outside of wilderness;
- Sec. 23, SW¼SW¼;
- Sec. 26, portion of NW¼NW¼ outside of wilderness.

T. 2 N., R. 1 E.,
- Secs. 1 to 5, inclusive;
- Sec. 6, lots 1 thru 5, inclusive, S½NE¼, SE¼NW¼, NE¼SW¼, SE¼;
- Secs. 7 to 9, inclusive;
- Sec. 10, lots 1 and 2, W½NE¼, W½, portion of MS 1491;
- Sec. 11, lots 1 and 2, N½NE½, SW¼NE¼, portion of MS 1491;
- Sec. 12, N½N½, N½SW¼NE ¼, SE¼SW¼NE¼, SE¼NE¼, N½SE¼NW¼;
- Sec. 16, Portion of NW¼ above lake;
- Sec. 17, Portion of N½ above lake;
- Sec. 18, Portion of N½ above lake;
- Sec. 23, S½NE¼, NE¼NW¼, S½NW¼;
- Sec. 25, N½NE¼, SE¼NE¼, NE¼SE¼;
- Sec. 26, S½SW¼;
- Sec, 27, NW¼NW¼, S½S½;
- Sec. 28, N½NE¼;
- Sec. 30, lots 1, 2, and 4, NW¼NE¼, SW¼SE¼;
- Sec. 31, lots 3 and 5;
- Sec. 33, E½NE¼;

Sec. 34, N½, N½SW¼, SE¼SW¼, SE¼;
Sec. 35, S½NE¼, W½NW¼, SE¼NW¼, S½;
Sec. 36, NE¼NE¼, SW¼NW¼, ½.
T. 3 N., R. 1 E.,
Sec. 17, N½SW¼, N½SW¼SW¼, SE¼SW¼, SW¼SE¼;
Sec. 19, W½NE¼, E½SW¼, E½W½SW¼, W½SE¼;
Sec. 20, lot 2, W½NE¼;
Sec. 21, NW¼NW¼;
Sec. 22, N½NW¼;
Sec. 23, N½SW¼, SE¼SW¼;
Sec. 25, NE¼, S½NE¼, NE¼NW¼, S½NW¼, N½SW¼ , N½SE¼;
Sec. 26, lots 1 thru 3, inclusive, SW¼NE¼, S½NW¼, N½SW¼, portions of MS 911 and MS 320A;
Sec. 27, NE¼, E½SW¼, SE¼;
Sec. 28, E½NW¼, NW¼NW¼, NE¼SW¼;
Sec. 29, S½S½;
Sec. 30, NE¼, E½NE¼NW¼, S½NW¼, S½;
Sec. 31, lots 1, 5, and 12, portion of lot 3, portion of lot 6, MS 2559, MS 3056, portion of MS 3055, portion of MS 6485;
Sec. 32, lots 1 thru 5, inclusive, lots 7, 8, 10, and 18, portions of lots 13 thru 16, inclusive, S½NW¼SE¼, S½SE¼, S½S½NE¼SW¼NE¼, S½S½NW¼SE¼NW¼, portion of SW¼SE¼NE¼, portion of SE¼SW¼NE¼, portion of MS 100, portion of MS 3055,portion of MS 6409, portion of MS 6485;
Sec. 33, SW¼NE¼ except portion of MS 95, NW¼NW¼ except portion of MS 92, S½NW¼, SW¼, W½SE¼, SE¼SE¼;
Sec. 34, NE¼, E½NW¼, N½SE¼, SE¼SE¼;
Sec. 35, NW¼NE¼ except portion of MS 3989 and portion of MS 3815, NW¼ except portion of MS 3988 and portion of MS 3989, NW¼SW¼, S½SW¼;
Sec. 36, SE¼NE¼, E½SE¼.
T. 1 N., R. 2 E.,
Sec. 1, lots 1 thru 4, inclusive, S½NE¼, SE¼NW¼, portion of N½SW¼, portion of SE¼SW¼, NE¼SE¼, S½SE¼ ;
Sec. 2, lots 3 and 4, SW¼NE¼, S½NW¼, S½;
Sec. 3, lots 1 thru 4, inclusive, S½NE¼, S½NW¼, SW¼, N½SE¼, SE¼SE¼;
Sec. 4, lots 1 thru 3, inclusive, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 5, lots 3 and 4, SE¼NE¼;
Sec. 6, lots 1 thru 7, inclusive, E½SW¼, SE¼;
Sec. 9, NE¼, N½ NW¼, SE¼NW¼, NE¼SW¼;
Sec. 10, N½NW¼;
Sec. 11, NW¼NE¼, N½NW¼, SW¼NW¼;
Sec. 12, N½NE¼, N½S½NE¼, NW¼;
Sec. 13, W½SW¼, SE¼SW¼, SW¼SE¼;
Sec. 16, S½NW¼, N½SW¼, N½SE¼, SE¼SE¼ ;
Sec. 18, NE¼SW¼, portion of S½SE¼ south of Hwy 38;
Sec. 19, Portion of NE¼NE¼ south of Hwy 38, NW¼NE¼;
Sec. 20, S½NE¼, portion of NW¼ south of Hwy 38, N½SE¼;
Sec. 21, NE¼NE¼, SW¼NW¼, NW¼SW¼;
Sec. 23, SE¼NE¼, S½SE¼;
Sec. 24, S½NW¼, N½SW¼, NW¼SE¼;
Sec. 26, N½NE¼, SE¼NE¼, SE¼NW¼, NE¼SW¼, NE¼SE¼, SW¼SE¼;
Sec. 27, NW¼;
Sec. 34, N½SE¼.
T. 2 N., R. 2 E.,
Sec. 5, lots 1 and 2 of NW¼, N½NW¼SW¼, N½NE¼SW¼;
Sec. 6, N½E½ lot 2 of NE¼, SE¼E½ lot 2 of NE¼, E½E½ lot 1 of NE¼, lot 2 of SW¼, S½ lot 1 of SW¼;
Sec. 7, NE¼NE¼, S½NE¼, N½ and N½S½ lot 1 of NW¼ , N½ lot 2 of NW¼ , N½S½ lot of NW¼;
Sec. 8, NW¼NW¼NW¼, S½NW¼NW¼, SW¼NW¼, SW¼SE¼NW¼ , NW¼SW¼ , E½SW¼SW¼ , SE¼SW¼;
Sec. 10, NE¼SE¼;
Sec. 13, SE¼SW¼, NW¼SE¼, S½SE¼;
Sec. 14, S½NW¼, E½SW¼, N½SE¼, SW¼SE¼;
Sec. 15, NW¼NW¼;
Sec. 17, SE¼NE¼NE¼, S½NW¼NW¼, S½N½, N½S½, NE¼SE¼SW¼, N½SW¼SE¼, SE¼SW¼SE¼, SE¼SE¼;
Sec. 18, S½N½NE¼, N½S½NE¼, SE¼SE¼NE¼;
Sec. 20, E½SE¼SW¼, S½NE¼SE¼, S½SE¼, S½NW¼SE¼;
Sec. 21, N½NE¼, N½NE¼NW¼, S½N½S½, S½S½;
Sec. 22, NE¼SW¼NW¼, NE¼SW¼, S½NW¼SW¼, S½SW¼, SW¼SE¼;
Sec. 23, W½NE¼, E½NW¼, NE¼SW¼, NW¼SE ¼;
Sec. 25, SE¼NE¼, SE¼SE¼SW¼, W½SW¼, W½SE¼SW¼, SE¼SE¼SW¼ , E½NE¼SE¼, S½SW¼SE¼, SE¼SE¼;
Sec. 26, SW¼NW¼, S½;
Sec. 27, E½NE¼NE¼, NW¼NE¼NE¼, N½NW¼NE¼, N½N½NW¼, S½ except portion of NE¼SW¼, portion of NE¼NW¼SW¼, portion of NE¼SE¼SW¼, portion of N½SW¼SE¼;
Sec. 28, N½N½NE¼, N½NW¼, S½;
Sec. 29, All except NE¼NW¼NW¼, NW¼NW¼, N½SW¼NW¼, portion of NE¼SE¼NE¼, SE¼SE¼NE¼;
Sec. 30, lots 2 of NW¼;
Sec. 31, lots 2 thru 4, inclusive, NE¼NE¼, S½NE¼, SE¼NW¼, NE¼SW¼, SE¼SW¼, SE¼;
Sec. 32, N½, SW¼, N½SE¼, SW¼SE¼;
Secs. 33 and 34, inclusive;
Sec. 35, N½, N½SW¼, SE¼SW¼, SE¼;
Sec. 36, all.
T. 3 N., R. 2 E.,
Sec. 17, W½E½NE¼, W½E½, SE¼SE¼;
Sec. 19, W½NW¼NE¼, SW¼NE¼, S½N½SE¼NE¼, S½SE¼NE¼, N½SW¼;
Sec. 20, N½N½NE¼;
Sec. 27, S½NW¼;
Sec. 29, SE¼SW¼;
Sec. 30, S½SE¼;
Sec. 31, NE¼, S½NW¼, S½;
Sec. 32, N½SW¼, SW¼SW¼, NW¼SE¼, SE¼SE¼, S½NW¼, NW¼NW¼, NE¼SE¼.
T. 1 N., R. 3 E.,
Sec. 5, lot 4, SW¼NW¼, W½SW¼, SE¼SW¼;
Sec. 6, all;
Sec. 7, Portion of lots 1, 2, and 5, and lot 6;
Sec. 8, NW¼, W½SW¼, NE¼SE¼;
Sec. 19, NW¼NW¼;
Sec. 20, SW¼NE¼, W½NW¼, NE¼SE¼, S½SE¼.
T. 2 N., R. 3 E.,
Sec. 17, S½SW¼;
Sec. 18, lot 4, SE¼SW¼, SE¼;
Sec. 19, lot 1, lots 4 thru 6, inclusive, NW¼NE¼, E½NW¼, NE¼SW¼, SE¼;
Sec. 20, lots 1,2, 4, and 5, NE¼NW¼, NE¼SW¼, S½SW¼, portion of SE¼ outside Wilderness;
Sec. 27, W½W½;
Sec. 28, Portion of SW¼NW¼ outside Wilderness, portion of NE¼SE¼ outside Wilderness, S½SE¼;
Sec. 29, Portion of N½NE¼ outside Wilderness, NE¼NW¼, SW¼NW¼, W½SW¼, SE¼SW¼, SE¼NE¼;
Sec. 30, lots 2 thru 4, inclusive, SW¼NE¼, SE¼NW¼, NE¼SW¼, SE¼SW¼, W½SE¼;
Sec. 31, lots 1 & 2, NE¼, E½NW¼;
Sec. 32, NW¼;
Sec. 33, N½NE¼;
Sec. 34, NW¼NE¼, N½NW¼.
T. 1 N., R. 1 W.,
Sec. 12, NE¼SE¼, SW¼SE¼;
Sec. 13, N½NE¼;
Sec. 15, portion of SW¼SE¼;
Sec. 22, NW¼NE¼.
T. 2 N., R. 1 W.,
Sec. 2, SW¼SW¼;
Sec. 3, lot 1 of NW¼, NE¼SW¼, NW¼SE¼;
Sec. 12, NE¼, E½SE¼;
Sec. 14, Portion of E½NE¼ west of Hwy 18, portion of NE¼SW¼ north of Hwy 18;
Sec. 16, SW¼SW¼;
Sec. 21, N½NW¼;
Sec. 22, Portion of NE¼SE¼;
Sec. 25, N½NE¼, SW¼NE¼, SW¼, W½SE¼, SE¼SE¼;
Sec. 34, SE¼NE¼, N½NW¼, SE¼NW¼, NE¼SW¼, N½SE¼;
Sec. 35, W½NE¼, NW¼;
Sec. 36, NE¼NW¼.
T. 3 N., R. 1 W.,
Sec. 10, SE¼NE¼;
Sec. 14, W½SE¼;
Sec. 16, W½SW¼;
Sec. 17, NW¼SW¼, E½SE¼;
Sec. 18, lots 2 thru 5, inclusive, SE¼;
Sec. 22, S½SW¼;
Sec. 25, lots 2 and 3, W½NE¼, NE¼SW¼, NW¼SE¼;
Sec. 26, NE¼NW¼, SW¼NW¼;
Sec. 27, lots 1thru 4, NE¼, N½NW¼;
Sec. 28, lots 1 and 2, E½NE¼;
Sec. 30, lots 4 and 5;
Sec. 31, lot 6 & 7, SW¼NE¼, N½SE¼, SE¼SE¼;
Sec. 32, SE¼NE¼, W½NW¼;
Sec. 33, W½NW¼;
Sec. 36, lot 1, lots 4 thru 8, inclusive, portion of MS 2559 and MS 3059 in NE¼NE¼ and S½NE¼, portion of MS 3059 in SE¼NW¼,SW¼, portion of MS 3056 in N½SE¼;
T. 2 N., R. 2 W.,
Sec. 25, NE¼SW¼, SE¼.
T. 3 N., R. 2 W.,

Sec. 11, SE¼SE¼;
Sec. 12, NE¼NE¼, SW¼SW¼;
Sec. 13, NW¼SW¼, SW¼NE¼, NW¼;
Sec. 14, S½NE¼, SE¼NW¼, S½, NE¼NE¼;
Sec. 15, S½SW¼, SE¼SE¼;
Sec. 21, NE¼NE¼, S½NE¼, SE¼NW¼, N½SW¼;
Sec. 22, N½NE¼, SE¼NE¼, N½NW¼, SE¼NW¼, NE¼SW¼, W½SE¼, SE¼SE¼;
Sec. 23, N½NE¼, NW¼, W½SW¼ ;
Sec. 24, SW¼SW¼, NE¼SW¼;
Sec. 25, lots 2 and 3, W½NE¼, S½NW¼, N½SW¼, NW¼SE¼;
Sec. 26, lots 3 and 4, NE¼, W½NW¼, portion of HES 235;
Sec. 27, E½NE¼.

T. 3 N., R. 5 W.,
Sec. 28, S½;
Sec. 29, S½NW¼NE¼, SE¼NE¼, S½N½SE¼NE¼, S½SE¼NE¼, NW¼, S½.

The areas described aggregate approximately 44,575 acres in San Bernardino County.

The purpose of the proposed withdrawal is to conserve listed threatened and endangered species and the habitat upon which they depend. The proposed withdrawal will facilitate implementation of several provisions of a court settlement resulting from a lawsuit filed against the Bureau of Land Management regarding the Endangered Species Act.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Director, Lands & Minerals Management, Forest Service, Pacific Southwest Region, at the address listed above. Since the Forest Service is requesting this withdrawal, it is responsible for preparing any studies, analyses, and reports that are required by applicable statutes for the processing of this application. Those studies, analyses, and reports will be used by the Secretary of the Interior to make a decision as to whether this withdrawal should be authorized.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Director, Lands & Minerals Management, Forest Service, Pacific Southwest Region, at the address listed above, within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period are those which are determined to be compatible with the use of the lands by Forest Service.

Dated: September 7, 2001.

Angela Williams,

Acting Chief, Branch of Lands.

[FR Doc. 01–27094 Filed 10–26–01; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Preparation of an Environmental Assessment for Vastar Resources Inc.'s Proposed Deepwater Development Plan Offshore Louisiana (Horn Mountain Project)

AGENCY: Minerals Management Service, Interior.

ACTION: Preparation of an environmental assessment.

SUMMARY: The Minerals Management Service (MMS) is preparing an environmental assessment (EA) for a proposed deepwater development plan to develop and produce hydrocarbon reserves about 60 miles offshore Louisiana in Mississippi Canyon, Blocks 126 and 127.

This EA implements the tiering process outlined in 40 CFR 1502.20, which encourages agencies to tier environmental documents, eliminating repetitive discussions of the same issue. By use of tiering from the most recent Final Environmental Impact Statement (EIS) for the Gulf of Mexico Central Planning Area for Lease Sales 169, 172, 175, 178, and 182 and by referencing related environmental documents, this EA concentrates on environmental issues specific to the proposed action.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, Mr. G. Ed Richardson, telephone (504) 736–2605.

SUPPLEMENTARY INFORMATION: The MMS GOM Region received an Initial Development Operations Coordination Document (DOCD) from Vastar Resources Inc. (Vastar) that proposes to develop and produce hydrocarbon reserves located in Mississippi Canyon, Blocks 126 and 127. The DOCD was assigned a plan control number of N–7195 and the project is referred to as the Horn Mountain Project. Vastar will drill, complete, and produce a total of 10 wells in the subject blocks. All of the wells will share a common surface location (a truss spar floating production system) in Mississippi Canyon, Block 127.

The Horn Mountain truss spar is a manned floating production facility that will be permanently anchored on location by a 9-leg, taut catenary system composed of conventional wire, chain, and anchor piles. The hull portion of the spar measures approximately 106 feet in diameter and has an overall length of 555 feet. During the proposed operations, approximately 35–50 personnel may be engaged in designated activities.

The water depth at the truss spar location is approximately 5,423 feet. The project will use an existing onshore support base in Venice, Louisiana, to support the proposed activities.

Oil and gas produced at the Horn Mountain project will be transported off lease by right-of-way pipelines. These pipelines will connect with existing offshore infrastructure for final transport to shore.

The proposed action analyzed in the EA will be the development plan as proposed by Vastar. Alternatives will include the proposed action with additional mitigations and no action (i.e., disapproval of the plan). The analyses in the EA will examine the potential environmental effects of the proposal and alternatives.

Public Comments

The MMS requests interested parties to submit comments regarding issues that should be addressed in the EA to Minerals Management Service, Gulf of Mexico OCS Region, Office of Leasing and Environment, Attention: Regional Supervisor (MS 5410), 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394. Comments must be submitted no later than 30 days from the publication of this Notice.

Dated: September 28, 2001.

Chris C. Oynes,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 01–27104 Filed 10–26–01; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–417–421 and 731–TA–953–963 (Preliminary)]

Carbon and Certain Alloy Steel Wire Rod From Brazil, Canada, Egypt, Germany, Indonesia, Mexico, Moldova, South Africa, Trinidad and Tobago, Turkey, Ukraine, and Venezuela

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission determines, pursuant to section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Brazil, Canada, Germany, Trinidad and Tobago, and Turkey of carbon and certain alloy steel wire rod [2] that are alleged to be subsidized by the Governments of Brazil, Canada, Germany, Trinidad and Tobago, and Turkey. The Commission also determines, pursuant to section 733(a) of the Act (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine of carbon and certain alloy steel wire rod that are alleged to be sold in the United States at less than fair value (LTFV). The Commission also determines,[3] pursuant to section 771(24)(A) of the Act (19 U.S.C. 1677(24)(A)), that imports of carbon and certain alloy steel wire rod from Egypt, South Africa, and Venezuela that are alleged to be sold in the United States at LTFV are negligible, and its investigations with regard to those countries are thereby terminated pursuant to section 733(a) of the Act.

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce of affirmative preliminary determinations in the investigations under sections 703(b) and 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under sections 705(a) and 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Background

On August 31, 2001, a petition was filed with the Commission and Commerce by counsel on behalf of Co-Steel Raritan, Inc., Perth Amboy, NJ; GS Industries, Inc., Charlotte, NC; Keystone Consolidated Industries, Inc., Dallas TX; and North Star Steel Texas, Inc., Edina, MN, alleging that an industry in the United States is materially injured by reason of subsidized imports of carbon and certain alloy steel wire rod from Brazil, Canada, Germany, Trinidad and Tobago, and Turkey and LTFV imports of carbon and certain alloy steel wire rod from Brazil, Canada, Egypt, Germany, Indonesia, Mexico, Moldova, South Africa, Trinidad and Tobago, Ukraine, and Venezuela. Accordingly, effective August 31, 2001, the Commission instituted investigations Nos. 701–TA–417–421 and 731–TA–953–963 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of September 10, 2001 (66 FR 47036). The conference was held in Washington, DC, on September 21, 2001, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on October 15, 2001. The views of the Commission are contained in USITC Publication 3456 (October 2001), entitled Carbon and Certain Alloy Steel Wire Rod from Brazil, Canada, Egypt, Germany, Indonesia, Mexico, Moldova, South Africa, Trinidad and Tobago, Turkey, Ukraine, and Venezuela: Investigations Nos. 701–TA–417–421 and 731–TA–953–963 (Preliminary).

By order of the Commission.

Issued: October 23, 2001.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–27063 Filed 10–26–01; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] The merchandise covered by these investigations is certain hot-rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, 5.0 mm or more, but less than 19.0 mm, in solid cross-sectional diameter. Specifically excluded are steel products possessing the above-noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States (HTS) definitions for (a) stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; and (e) concrete reinforcing bars and rods. Also excluded are (f) free machining steel products (i.e., products that contain by weight one or more of the following elements: 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorous, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium). All products meeting the physical description of subject merchandise that are not specifically excluded are included in the scope. The subject merchandise is provided for in HTS subheadings 7213.91, 7213.99, 7227.20, and 7227.90.60.

[3] Commissioner Lynn M. Bragg, however, further finds that subject imports of wire rod from Egypt, South Africa, and Venezuela will imminently exceed the statutory negligibility threshold, and makes an affirmative threat determination with respect to such imports.

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–435]

In the Matter of Certain Integrated Repeaters, Switches, Transceivers, and Products Containing Same; Notice of Issuance of Limited Exclusion Order

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has issued a limited exclusion order in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3115. Copies of the public versions of the Commission's opinion and all other nonconfidential documents in the record of this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. Hearing-impaired persons are advised that information on this matter can be

obtained by contacting the Commission's TDD terminal on (202) 205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at http://dockets.usitc.gov/eol/public.

SUPPLEMENTARY INFORMATION: This patent-based section 337 investigation was instituted on August 23, 2000, based upon a complaint filed on July 20, 2000, by Intel Corporation (''Intel'') and Level One Communications, Inc. (''Level One''). 65 FR 51327 (Aug. 23, 2000). The respondent is Altima Communications, Inc. (''Altima''). A second patent-based section 337 investigation naming Altima as a respondent was instituted on April 24, 2000, based upon a complaint filed by Level One on March 23, 2000, and supplemented on April 13, 2000. 65 FR 21789 (Apr. 24, 2000). On August 24, 2000, the presiding administrative law judge (ALJ) issued an order consolidating the two investigations. From April 16, 2001, through April 30, 2001, the ALJ held an evidentiary hearing. On July 19, 2001, the ALJ issued a final initial determination (ID) finding that respondent Altima has violated section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), by infringing certain claims of two of complainants' asserted patents. Specifically, the ALJ found that: (1) There has been importation and sale of the accused products; (2) complainants practice the patents in controversy and satisfy the domestic industry requirements of section 337; (3) certain of the claims in issue are valid; (4) the accused imported products directly infringe certain of the claims in issue; and (5) respondent has induced infringement of certain of the claims in issue. Based on these findings, the ALJ concluded there was a violation of section 337. The ALJ recommended issuance of a limited exclusion order.

Complainants Intel and Level One and respondent Altima filed petitions for review of various portions of the ALJ's final ID, and opposed each others' petitions for review. The Commission investigative attorney (IA) did not petition for review of the final ID, but opposed the other parties' petitions for review. On September 5, 2001, the Commission determined not to review the ALJ's final ID and issued a notice to that effect. 66 Fed. Reg. 47037 (Sep. 10, 2001).

Having determined that a violation of section 337 has occurred in the importation, sale for importation, or sale in the United States of the accused integrated repeaters, as well as integrated repeaters and switches in plastic ball grid array (PBGA) packages, the Commission considered the issues of the appropriate form of relief, whether the public interest precludes issuance of such relief, and the bond during the 60-day Presidential review period.

The Commission determined that a limited exclusion order prohibiting the importation of the accused integrated repeaters, and circuit boards and carriers containing such devices, as well as integrated repeaters, switches and other products in PBGA packages, and circuit boards and carriers containing such devices. and directed to respondent Altima is the appropriate form of relief. The Commission further determined that the statuturay public interest factors don not preclude the issuance of such relief, and that respondent's bond under the limited exclusion order shall be in the amount of 100 percent of the entered value of the imported articles.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and section 210.50 of the Commission's Rules of Practice and Procedure (19 CFR 210.50).

Dated: Issued: October 24, 2001.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–27167 Filed 10–26–01; 8:45 am]

BILLING CODE 7020–02–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities; Proposed Collections; Comments Requested

ACTION: 60—day notice of information collection under review; reinstatement, with change, of a previously approved collection for which approval has expired—National Youth Gang Survey.

The Department of Justice (DOJ), Office of Justice Programs, (OJP), Office of Juvenile Justice and Delinquency Prevention has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies.

Comments are encouraged and will be accepted for ''sixty days'' until December 28, 2001. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Phelan Wyrick, (202) 353–9254, Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice, 810 Seventh Street, NW., Washington, DC 20531.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of information collection:* Reinstatement, with change, of a previously approved collection for which approval has expired.

(2) *The title of the form/collection:* National Youth Gang Survey.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Office of Juvenile Justice, and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State, Local, or Tribal law enforcement agencies. Other: None. This collection will gather information related to youth and their activities for research and assessment purposes.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that there will be 3,000 respondents. It is estimated that each survey will take 15 minutes to complete.

(6) *An estimate of the total public burden (in hours) associates with the collection:* An estimate of the total hour burden to conduct this survey is 750 hours.

If additional is required contact: Brenda E. Dyer, Department Deputy Clearance Officer, Information Management and Security Staff, Justice Management Division, United States Department of Justice, Suite 1600, 601 D Street NW, Washington, DC 20530.

Dated: October 23, 2001.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 01–27091 Filed 10–26–01; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application Number: D–10616]

Proposed Amendment To Prohibited Transaction Exemption (PTE) 79–15 (44 FR 26979, May 8, 1979); PTE 80–26 (45 FR 28545, April 29, 1980); PTE 80–83 (45 FR 73189, November 4, 1980); PTE 81–6 (45 FR 7527, January 23, 1981 (as amended at 52 FR 18754, May 19, 1987)); PTE 81–8 (46 FR 7511, January 23, 1981 (as amended by 50 FR 14043, April 9, 1985)); PTE 82–63 (47 FR 14804, April 6, 1982); PTE 83–1 (48 FR 895, January 7, 1983); PTE 84–14 (49 FR 9494, March 13, 1984) PTE 88–59 (53 FR 24811, June 30, 1988); PTE 91–38 (56 FR 31966, July 12, 1991); PTE 95–60 (60 FR 35925, July 12, 1995); PTE 96–62 (61 FR 39988, July 31, 1996)

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Notice of proposed amendment to certain class exemptions.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed amendment to certain class exemptions. The proposed amendment would define the term ''employee benefit plan'', as such term is used in certain class exemptions, to include plans described in section 4975(e)(1) of the Internal Revenue Code of 1986 (the Code). If adopted, the proposed amendment would affect individuals with beneficial interests in such plans, as well as the financial institutions that provide services and products to the plans.

DATES: Written comments and requests for a public hearing should be received by the Department on or before December 13, 2001. If adopted, the proposed amendment would be effective as of: May 1, 1979 with respect to PTE 79–15; January 1, 1975 with respect to PTE 80–26; December 1, 1980 with respect to Section I(B) of PTE 80–83 (the amendment would be effective January 1, 1975 with respect to the remainder of PTE 80–83); January 23, 1981 with respect to PTE 81–6; January 1, 1975 with respect to PTE 81–8; April 6, 1982 with respect to PTE 82–63; January 1, 1975 with respect to PTE 83–1; December 21, 1982 with respect to PTE 84–14; January 1, 1975 with respect to PTE 88–59; July 1, 1990 with respect to PTE 91–38; January 1, 1975 with respect to PTE 95–60; and July 31, 1996 with respect to PTE 96–62.

ADDRESSES: All written comments and requests for a public hearing (preferably three copies) should be addressed to the U.S. Department of Labor, Office of Exemption Determinations, Pension and Welfare Benefits Administration, Room N–5649, 200 Constitution Avenue, NW, Washington, DC 20210, (Attention: D–10616).

FOR FURTHER INFORMATION CONTACT: Christopher J. Motta, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, (202) 219–8971, (this is not a toll-free number); or Paul Mannina, Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor (202) 693–5600. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of a proposed amendment to PTE 79–15; PTE 80–26; PTE 80–83; PTE 81–6; PTE 81–8; PTE 82–63; PTE 83–1; PTE 84–14; PTE 88–59; PTE 91–38; PTE 95–60; and PTE 96–62. These class exemptions provide relief from certain of the restrictions described in section 406 of the Employee Retirement Income Security Act of 1974 (ERISA), and the taxes imposed by sections 4975(a) and (b) of the Code, by reason of a parallel provision described in section 4975(c)(1)(A) through (F) of the Code, provided that the conditions of the relevant exemption have been met. The Department is proposing to amend the above-described exemptions on its own motion, pursuant to section 408(a) of ERISA and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990).

The class exemptions described in this proposed amendment do not define the term ''employee benefit plan''. As a result, the Department has become increasingly aware of uncertainty regarding the scope of these class exemptions. To address this uncertainty, the Department has determined to amend each exemption in order to define the term ''employee benefit plan'' and ''plan'' as used therein.

Prior to the effective date of Reorganization Plan No. 4 of 1978 (5 U.S.C. App. 1 (1996)) (the Reorganization Plan), exemptions granted pursuant to section 408(a) of ERISA and section 4975(c)(2) of the Code were issued jointly by the Department of Labor (the Department) and the Internal Revenue Service (the Service). A number of class exemptions issued jointly by the Department and Service did not define the term ''employee benefit plan'' and ''plan'' as contained therein. Given the dual nature of the authority used to grant these exemptions, a number of practitioners believed that references to ''employee benefit plan'' and ''plan'' in these pre-Reorganization Plan class exemptions included employee benefit plans described in section 3(3) of ERISA [1] and plans described in section 4975(e)(1) of the Code.[2]

After consultation with the Service, the Department has determined that plans described in section 4975(e)(1) of the Code are included within the scope of relief provided by the following class exemptions:

PTE 75–1, 40 FR 50845 (1975);
PTE 77–4, 42 FR 18732 (1977);
PTE 77–7, 42 FR 31575 (1977), amended and redesignated as PTE 92–5 by 57 FR 5019 (1992); PTE 77–8, 42 FR 31574 (1977), amended and redesignated as PTE 92–6, 57

[1] Section 3(3) of ERISA provides that the term ''employee benefit plan'' or ''plan'' means an employee welfare benefit plan or an employee pension benefit plan or a plan which is both an employee welfare benefit plan and an employee pension benefit plan.

[2] Section 4975(e)(1) of the Code provides that, for purposes of that Code section, the term ''plan'' means: (A) A trust described in Code section 401(a) which forms a part of a plan, or a plan described in Code section 403(a), which trust or plan is exempt from tax under section 501(a); (B) an individual retirement account described in Code section 408(a); (C) an individual retirement annuity described in section Code 408(b); (D) a medical savings account described in Code section 220(d); (E) an education individual retirement account described in Code section 530, or (f) a trust, plan, account, or annuity which, at any time, has been determined by the Secretary to be described in any preceding subparagraph of this paragraph.

FR 5189 (1992); PTE 77–9, 42 FR 32395 (1977), amended and redesignated as PTE 84–24, 49 FR 13208 (1984); and PTE 78–19, 43 FR 59915 (1978), amended and redesignated as PTE 90–1, 55 FR 2891 (1990).

Exemptions issued subsequent to the effective date of the Reorganization Plan, however, were not issued pursuant to the dual authority of the Department and the Service. In this regard, section 102 of the Reorganization Plan generally transferred the authority of the Secretary of the Treasury to issue exemptions under section 4975(c)(2) of the Code to the Secretary of Labor. As a result, class exemptions granted after the effective date of the Reorganization Plan were issued pursuant to the sole authority of the Department.

Practitioners have noted that the Department, when issuing post-Reorganization Plan class exemptions, did not always expressly define the term ''employee benefit plan'' and ''plan'', as used therein. The practitioners noted that, given that such exemptions were issued solely by the Department, it remains unclear whether the term ''employee benefit plan'' includes a ''plan'' which is not subject to Title I of ERISA but is otherwise described in section 4975(e)(1) of the Code.

For example, practitioners cite uncertainty regarding whether IRAs and Keogh Plans are within the scope of the above-referenced exemptions. In this regard, the practitioners note that, while most IRAs and Keogh Plans are excluded from the term ''employee benefit plan'' for purposes of ERISA section 3(3),[3] such entities may be includable within the term ''plan'' for purposes of Code section 4975(e)(1). The practitioners, therefore, seek clarification as to whether IRAs and Keogh Plans are ''employee benefit plans'' for purposes of the relevant class exemptions.

In consideration of this uncertainty, the Department is proposing to clarify the scope of relief provided by the aforementioned class exemptions by defining the terms ''employee benefit plan'' and ''plan'' to include plans described in Code section 4975(e)(1). The Department notes that such clarification is consistent with the Department's longstanding intent to include IRA and Keogh Plans within the meaning of the terms ''employee benefit plan'' and ''plan'' with respect to the enumerated class exemptions.

[3] See 29 CFR 2510.3–2(d) and 29 CFR 2510.3–3(b).

Notice to Interested Persons

Because many participants in plans described in section 4975(e)(1) of the Code, as well as financial institutions, could conceivably be considered interested persons, the only practical form of notice is publication in the **Federal Register**.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of ERISA and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of ERISA and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act which require, among other things, that a fiduciary discharge his duties with respect to the plan solely in the interests of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of ERISA; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) Before an exemption may be granted under section 408(a) of ERISA and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interest of plans and their participants and beneficiaries and protective of the rights of the participants and beneficiaries of such plans.

(3) The proposed amendment, if granted, will be supplemental to, and not in derogation of, any other provisions of ERISA and the Code including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) If granted, the proposed amendment will be applicable to a transaction only if the conditions specified in the class exemption are met.

Written Comments and Hearing Request

All interested persons are invited to submit written comments or requests for a public hearing on the proposed amendment to the address and within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the proposed amendment. Comments received will be available for public inspection with the referenced application at the above address.

Proposed Amendment

Under section 408(a) of ERISA and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990), the Department proposes to amend the following class exemptions as set forth below:

1. PTE 79–15 is amended by adding the following paragraph at the end of the exemption to read as follows: For purposes of this exemption, the terms ''employee benefit plan'' and ''plan'' refer to an employee benefit plan described in ERISA section 3(3) and/or a plan described in section 4975(e)(1) of the Code.

2. PTE 80–26 is amended by adding the following paragraph at the end of the exemption to read as follows: For purposes of this exemption, the terms ''employee benefit plan'' and ''plan'' refer to an employee benefit plan described in ERISA section 3(3) and/or a plan described in section 4975(e)(1) of the Code.

3. PTE 80–83 is amended by adding the following paragraph 4. to Section II. b. to read as follows: 4. For purposes of this exemption, the terms ''employee benefit plan'' and ''plan'' refer to an employee benefit plan described in section 3(3) of ERISA and/or a plan described in section 4975(e)(1) of the Code.

4. PTE 81–6 is amended by adding the following paragraph at the end of the exemption to read as follows: For purposes of this exemption, the terms ''employee benefit plan'' and ''plan'' refer to an employee benefit plan described in ERISA section 3(3) and/or a plan described in section 4975(e)(1) of the Code.

5. PTE 81–8 is amended by adding the following paragraph at the end of the exemption to read as follows: For purposes of this exemption, the terms ''employee benefit plan'' and ''plan'' refer to an employee benefit plan described in ERISA section 3(3) and/or a plan described in section 4975(e)(1) of the Code.

6. PTE 82–63 is amended by adding the following paragraph (4) to section II. Definitions to read as follows: (4) For purposes of this exemption, the terms ''employee benefit plan'' and ''plan''

refer to an employee benefit plan described in ERISA section 3(3) and/or a plan described in section 4975(e)(1) of the Code.

7. PTE 83–1 is amended by adding the following paragraph I. to Section III. Definitions to read as follows: I. For purposes of this exemption, the terms ''employee benefit plan'' and ''plan'' refer to an employee benefit plan described in ERISA section 3(3) and/or a plan described in section 4975(e)(1) of the Code.

8. PTE 84–14 is amended by adding the following paragraph (n) to Part V—Definitions and General Rules to read as follows: (n) The terms ''employee benefit plan'' and ''plan'' refer to an employee benefit plan described in section 3(3) of ERISA and/or a plan described in section 4975(e)(1) of the Code.

9. PTE 88–59 is amended by adding the following paragraph (F) to Section III. Definitions to read as follows: (F) The terms ''employee benefit plan'' and ''plan'' refer to an employee benefit plan described in section 3(3) of ERISA and/or a plan described in section 4975(e)(1) of the Code.

10. PTE 91–38 is amended by adding the following paragraph (k) to Section IV—Definitions and General Rules to read as follows: The terms ''employee benefit plan'' and ''plan'' refer to an employee benefit plan described in section 3(3) of ERISA and/or a plan described in section 4975(e)(1) of the Code.

11. PTE 95–60 is amended by adding the following paragraph (j) to Section V—Definitions to read as follows: (j) The terms ''employee benefit plan'' and ''plan'' refer to an employee benefit plan described in section 3(3) of ERISA and/or a plan described in section 4975(e)(1) of the Code.

12. PTE 96–62 is amended by adding paragraph (g) to Section IV: Definitions to read as follows: (g) For purposes of this exemption, the terms ''employee benefit plan'' and ''plan'' refer to an employee benefit plan described in section 3(3) of ERISA and/or a plan described in section 4975(e)(1) of the Code.

Signed at Washington, DC, this 23rd day of October 2001.

Ivan L. Strasfeld,

Director, Office of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 01–27062 Filed 10–26–01; 8:45 am]

BILLING CODE 4510–29–P

NUCLEAR REGULATORY COMMISSION

[DOCKET NO. 50–285]

Omaha Public Power District; Notice of Withdrawl of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Omaha Public Power District (OPPD/the licensee) to withdraw its October 27, 2000, application for proposed amendment to Facility Operating License No. DPR–40 for the Fort Calhoun Station, Unit 1, located in Washington County, Nebraska.

The proposed amendment would have eliminated the refueling requirement for the 13.8 kV transmission line surveillance test. Fort Calhoun receives 161 kV and 345 kV off-site power from the switchyard at the plant site. Power from a 13.8 kV supply is also available in the switchgear room. The ability to use the 13.8 kV power supply, originally a construction power supply, was added to the technical specifications (TSs) during the licensing of the Fort Calhoun Station because in the NRC's review of the Fort Calhoun Final Safety Analysis Report, it was noted that the 345 kV lines passed over the 161 kV lines, and should a 345 kV line fall for any reason, the 161 kV line might also be lost. OPPD maintained that this line is not capable of supplying post-design basis accident loads and it is not credited in the licensing basis for mitigation of design basis accidents. In addition, OPPD stated the surveillance test places a significant burden upon the operating crew and involves the switching of many components. After several discussions with the staff, OPPD has decided to withdraw this request to re-evaluate the basis for this TS change.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on December 27, 2000 (65 FR 81927). However, by letter dated October 5, 2001, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated October 27, 2000, and the licensee's letter dated October 5, 2001, which withdrew the application for the license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/NRC/ADAMS/index/html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC Public Document Room (PDR) Reference staff by telephone at 1–800–397–4209, 301–415–4737 or by email to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 23rd day of October 2001.

For the Nuclear Regulatory Commission.

Alan B. Wang,

Project Manager, Section 2, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01–27158 Filed 10–26–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Revised

The agenda for the 487th ACRS meeting scheduled to be held on November 8–10, 2001, has been revised to reflect the changes noted below. Notice of this meeting was previously published in the **Federal Register** on Tuesday, October 23, 2001 (66 FR 53645).

FRIDAY, NOVEMBER 9, 2001

• The Committee will meet with NRC Commissioner McGaffigan between 1:30 and 2:30 p.m. to discuss items of mutual interest.

• Discussion of other items (Future ACRS Activities/Report of the Planning and Procedures Subcommittee, Reconciliation of ACRS Comments and Recommendations, Topics for Meeting the NRC Commissioners, and Proposed ACRS Reports) will be held about an hour later than previously announced in the **Federal Register** on October 23, 2001.

The agenda for Thursday, November 8 and Saturday, November 10, 2001 remains the same as previously announced in the **Federal Register** on October 23, 2001.

For further information contact: Dr. Sher Bahadur (telephone 301–415–0138) between 7:30 a.m. and 4:15 p.m., EDT.

Dated: October 23, 2001.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 01–27156 Filed 10–26–01; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:

Form 3, OMB Control No. 3235–0104, SEC File No. 270–125

Form 4, OMB Control No. 3235–0287, SEC File No. 270–126

Form 5, OMB Control No. 3235–0362, SEC File No. 270–323

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) The Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget requests for extension of the previously approved collections of information discussed below.

Forms 3, 4, and 5 are filed by insiders of public companies that have a class of securities registered under section 12 of the Securities Exchange Act of 1934 (''Exchange Act''). Form 3 is an initial statement of beneficial ownership of securities, Form 4 is a statement of changes in beneficial ownership of securities and Form 5 is an annual statement of beneficial ownership of securities. Approximately 29,000 issuers file form 3 for a total of 14,500 annual burden hours. Approximately 70,204 issuers file Form 4 annually for a total of 34,102 annual burden hours. Approximately 43,500 issuers file Form 5 annually for a total of 43,500 annual burden hours.

Form 3, Form 4, and Form 5 information collections are mandatory and available to the public upon request. Finally, persons who respond to these collections are not required to respond unless the collections of information display a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: October 19, 2001.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–27126 Filed 10–26–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–14609]

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration on the American Stock Exchange LLC (Excel Legacy Corporation, 9.0% Convertible Redeemable Subordinated Debentures (due 2004) and 10.0% Senior Redeemable Notes (due 2004))

October 24, 2001.

Excel Legacy corporation, a Delaware Corporation (''Issuer''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to section 12(d) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its 9.0% Convertible Redeemable Subordinated Debentures (due 2004) and 10.0% Senior Redeemable Notes (due 2004) (''Securities''), from listing and registration on the American Stock Exchange LLC (''Amex'').

The Issuer stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in effect in the State of Delaware, in which it is incorporated and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration. The issuer's application relates solely to the Securities' withdrawal from listing and registration under section 12(b) of the Act[3] and shall not affect its obligation to be registered under section 12(g) of the Act.[4]

On September 28, 2001, the Issuer merged with Price Legacy Corporation, formerly known as Price Enterprises, Inc. On October 9, 2001, the Board of Directors of the Issuer approved resolutions to withdraw the Issuer's Securities from listing on the Amex. In making the decision to withdraw the Securities from listing on the Exchange, the Issuer considered the limited principal amount of Securities outstanding, the limited number of shareholders, and the additional expense of listing on the Amex.

Any interested person may, on or before November 13, 2001, submit by letter to the Secretary of the Securities and Exchange commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–27192 Filed 10–24–01; 4:39 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–25220; 812–11632]

PIMCO Funds, et al.; Notice of Application

October 22, 2001.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (''Act'') for an exemption from section 12(d)(1) of the Act, under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act, under section 6(c) of the Act for an exemption from sections 18(f) and 21(b) of the Act, and under section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint arrangements.

SUMMARY OF APPLICATION: Applicants request an order that would permit certain registered management investment companies to invest uninvested cash in affiliated money market funds and to participate in a joint lending and borrowing facility. The order would supersede a prior order (''Prior Order'').[1]

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

[5] 17 CFR 200.30–3(a)(1).

[1] Cash Accumulation Trust, Investment Company Act Release Nos. 22894 (Nov. 18, 1997) (notice) and 22842 (Dec. 16, 1997) (order).

APPLICANTS: PIMCO Funds (d/b/a PIMCO Funds: Pacific Investment Management Series), PIMCO Variable Insurance Trust, and PIMCO Funds: Multi-Manager Series (collectively, the ''Existing Funds'') (each Existing Fund on its own behalf and behalf of all existing series); PIMCO Advisors L.P. (''PIMCO Advisors'') and Pacific Investment Management Company LLC (''PIMCO''), and any person controlling, controlled by, or under common control with PIMCO Advisors or PIMCO that serves as an investment adviser to a Fund (as defined below) (individually, ''Adviser'' and collectively, the ''Advisers''); and any future open-end registered management investment company and its series for which an Adviser serves as an investment adviser (''Future Funds,'' and together with the Existing Funds, the ''Funds'').

FILING DATES: The application was filed on May 28, 1999, and amended on October 2, 2000 and July 23, 2001. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 16, 2001 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants' 840 Newport Center Drive, Suite 300, Newport Beach, California 92660.

FOR FURTHER INFORMATION CONTACT: Nadya B. Roytblat, Assistant Director (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. Each Existing Fund is registered under the Act as an open-end management investment company and is organized either as a Delaware or Massachusetts business trust.[2] The Money Market Fund, a series of PIMCO Funds, holds itself out to the public as a money market fund and is subject to the requirements of rule 2a–7 under the Act. The Money Market Fund and any other open-end Fund that in the future is subject to the requirements of rule 2a–7 under the Act, holds itself out to the public as a money market fund, and relies on the order, are referred to in this notice as the ''Money Market Funds''. The Short-Term Fund, a series of PIMCO Funds, is a short-term bond fund that invests in money market instruments and short maturity fixed income securities. The Short-Term Fund and any other open-end Fund that in the future holds itself out to the public as a short-term bond fund and relies upon the order requested herein, and the Money Market Funds, are referred to in this notice collectively as the ''Central Funds''. Any Fund that is not a Central Fund is referred to herein individually as a ''Mon-Money Market Fund.''

2. The Advisers are registered under the Investment Advisers Act of 1940 and serve as investments advisers to the Funds. PIMCO is a subsidiary of PIMCO Advisors.

A. Investment of Cash Balances in the Central Funds

1. Each Non-Money Market Fund has, or may be expected to have, cash reserves that have not been invested in portfolio securities (''Uninvested Cash'') held by its custodian. Uninvested Cash may result from a wide variety of sources, including dividends or interest received or portfolio securities, unsettled securities transactions, reserves held for investment strategy purposes, scheduled maturity of investments, liquidation of investment securities to meet anticipated redemptions and dividend payments, and new monies received from investors.

2. Applicants request an order to permit: (a) each of the Non-Money Market Funds to use their Uninvested Cash to purchase shares of the Central Funds (each Non-Money Market Fund that purchases shares of the Central Funds, an ''Investing Fund''); (b) each of the Investing Funds to utilize cash collateral received from borrowers in connection with its securities lending activities (''Cash Collateral'' and, together with Uninvested Cash, ''Cash Balances'') to purchase shares of one or more Central Fund; and (c) the Central Funds to sell their shares to, and redeem their shares from the Investing Funds. The Prior Order permits certain of the Non-Money Market Funds to use their Cash Balances to purchase shares of the Central Funds (and certain other money market fund and/or short-term bond fund series), so long as the aggregate investment by a Non-Money Market Fund does not exceed 25% of its total net assets. Applicants seek an order that would supersede the Prior Order and permit an Investing Fund's aggregate investment of Cash Balances in the Central Funds not to exceed the greater of 25% of the Investing Fund's total assets or $10 million. Any such investment will be in accordance with the Investing Fund's organizational documents and investment policies and will be described in its Statement of Additional Information (''SAI'') and other appropriate disclosure documents.

B. Interfund Lending Program

1. Under current arrangements, each Central Fund may lend money to banks, brokers, or other entities by entering into repurchase agreements or purchasing other short-term instruments. In addition, the Non-Money Market Funds may borrow money from the same or other banks for temporary or emergency purposes to satisfy redemption requests or to cover unanticipated cash shortfalls, such as when cash payments for a portfolio security sold by a Non-Money Market Fund has been delayed. Currently, the Non-Money Market Funds have credit arrangements with their custodian under which the custodian may, but is not obligated to, lend money to the Non-Money Market Funds to meet the Non-Money Market Funds' temporary or emergency cash needs. The Non-Money Market Funds may also borrow money from banks, brokers, and other entities by entering into reverse repurchase agreements and economically similar transactions.

2. If the Non-Money Market Funds borrow money from any bank under their current arrangements or under other credit arrangements, the Non-Money Market Funds will pay interest on the borrowed cash at a significantly higher rate that the rate that would be earned by the Central Funds on investments in repurchase agreements and other short-term instruments of the same maturity as the bank loan. Applicants believe this differential

[2] All existing Funds that currently intend to rely on the order have been named as applicants, and any other Fund that subsequently may rely on the order will comply with the terms and conditions in the application.

represents the bank's profit for serving as a middleman between a borrower and lender. Other bank loan arrangements, such as committed lines of credit, requires the Non-Money Market Funds to pay substantial commitment fees in addition to the interest rate to be paid by the Non-Money Market Funds.

3. Applicants request an order that would permit the Funds to enter into lending agreements (''Interfund Lending Agreements'') under which the Non-Money Market Funds would borrow money from the Central Funds for temporary and emergency purposes (''Interfund Loans''). Applicants believe that the proposed credit facility will substantially reduce the Non-Money Market Funds' potential borrowing costs and enhance the ability of the Central Funds to earn higher rates of interest on short-term lendings. The Non-Money Market Funds will be free to maintain any existing line of credit or other borrowing arrangement currently provided by their custodian or establish committed lines of credit or other borrowing arrangements with banks.

4. Applicants anticipate that the credit facility will provide a Non-Money Market Fund with significant savings when the cash position of the Non-Money Market Fund is insufficient to meet temporary cash requirements. This situation could arise when redemptions exceed anticipated volumes and the Non-Money Market Funds have insufficient cash on hand to satisfy such redemptions. When the Non-Money Market Funds liquidate portfolio securities to meet redemption requests, which normally are effected immediately, they often do not receive payment in settlement for up to three days (or longer for certain foreign transactions). The credit facility will provide a source of immediate, short-term liquidity pending settlement of the sale of portfolio securities.

5. Applicants also propose arranging Interfund Loans when a sale of securities fails due to circumstances such as a delay in the delivery of cash to the Non-Money Market Fund's custodian or improper delivery instructions by the broker effecting the transaction (a ''sales fail''). In such circumstances, a cash shortfall could result if the Non-Money Market Fund has undertaken to purchase a security within the proceeds from securities sold. When a Non-Money Market fund experiences a cash shortfall, the custodian typically extends temporary credit to cover the shortfall and the Non-Money Market Fund incurs overdraft charges. Alternatively, the Non-Money Market Fund could fail on its intended purchase due to lack of funds from the previous sale, resulting in additional cost to the Non-Money Market Fund, or sell a security on a same day settlement basis, earning a lower return on the investment. Use of the credit facility under these circumstances will enable the Non-Money Market Funds to have access to immediate, short-term liquidity without incurring custodian overdraft or other charges.

6. While borrowing arrangements with banks will continue to be available to cover sales fails and other cash shortfalls, under the proposed credit facility a Non-Money Market Fund would pay lower interest rates than those offered by banks on short-term loans. In addition, by making short-term cash loans directly to Non-Money Market Funds, the Central Funds will earn interest at a rate higher than they otherwise could obtain from investments on repurchase agreements or other short-term instruments. Thus, Applicants assert that the proposed credit facility would benefit both the Central Funds and the Non-Money Market Funds.

7. The interest rate charged to the Non-Money Market Funds on any Interfund Loan (the ''Interfund Loan Rate'') will be the average of the ''Repo Rate'' and the ''Bank Loan Rate'' (both as defined below). The Repo Rate for any day will be the highest rate available to the Central Funds from investments in overnight repurchase agreements. The Bank Loan Rate for any day will be calculated by PIMCO each day an Interfund Loan is made according to a formula established by each Non-Money Market Fund's board of trustees or directors (''Board'') designed to approximate the lowest interest rate at which bank short-term loans would be available to the Non-Money Market Funds. The formula would be based on the publicly available rate and would vary with this rate to reflect changing bank loan rates. Each Non-Money Market Fund's Board periodically will review the continuing appropriateness of using the publicly available rate, as well as the relationship between the Bank Loan Rate and current bank loan rates that would be available to the Non-Money Market Funds. The initial formula and any subsequent modifications will be subject to the approval of each Non-Money Market Fund's Board.

8. The Interfund Loans would be administered by PIMCO. Under the Interfund Lending Agreements, the portfolio managers for each participating Fund may provide standing instructions to participate daily as a borrower or lender. On each business day, PIMCO will collect data on the Cash Balances and borrowing requirements of all participating Funds from the Fund's customers. Once it determines the aggregate amount of cash available for loans and borrowing demand, PIMCO will allocate loans from the Central Funds among the Non-Money Market Funds without any further communication from portfolio managers. Applicants expect that there will be more available Cash Balances each day than borrowing demand. After PIMCO has allocated cash for Interfund Loans, it will invest any remaining cash in accordance with standing instructions from each Central Fund's portfolio manager or return remaining amounts for investment directly by the portfolio manager of each Central Fund. The Central Funds typically will not participate as borrowers because they rarely need to borrow cash to meet redemptions. The Central Funds typically will not participate as borrowers because they rarely need to borrow cash to meet redemptions.

9. PIMCO will allocate borrowing demand and cash available for lending among the Funds on what PIMCO believes to be an equitable basis, subject to certain administrative procedures applicable to all Funds, such as the time of filing requests to participate, minimum loan lot sizes, and the need to minimize the number of transactions and associated administrative costs. To reduce transaction costs, each loan normally would be allocated in a manner intended to minimize the number of participants necessary to complete the loan transaction. The method of allocation and related administrative procedures would be approved by each Fund's Board, including a majority of the directors or trustees who are not ''interested person'' of the Fund, as defined in section 2(a)(19) of the Act (''Independent Trustees''), to ensure that both Non-Money Market Funds and Central Funds participate in such transactions on an equitable basis.

10. PIMCO will: (a) Monitor the interest rates charged and the other terms and conditions of the Interfund Loans, (b) in consultation with a Fund's Adviser, limit to borrowings and loans entered into by each Fund to ensure that they comply with the Fund's investment policies and limitations, (c) ensure equitable treatment of each Fund, and (d) prepare quarterly reports to each Fund's Board concerning any Interfund Loans in which the Funds participate and the interest rates charged.

11. PIMCO will administer the Interfund Loans as part of its duties under its existing management or

advisory and service contract arrangements with each Fund and will receive no additional fee as compensation for its services.

12. Each Fund's participation in the proposed Interfund Loans will be consistent with its organizational documents and its investment policies and limitations, as disclosed in its registration statement. If required by law, each of the Non-Money Market Funds and the Central Funds will obtain shareholder approval to amend its fundamental investment policies to permit it to engage in Interfund Loans. If the requested order is granted, each Fund will disclose all material facts about its intended participation in Interfund Loans in its SAI and any other appropriate disclosure document.

13. In connection with the Interfund Loans, applicants request an order of exemption pursuant to Sections 12(d)(1)(J), 6(c), and 17(b) of the Act, and an order pursuant to Rule 17d–1 thereunder, subject to certain conditions and limitations, permitting: (a) Each of the Investing Funds to purchase and redeem shares of the Central Funds; (b) the Central Funds to sell their shares to, and to redeem their shares from, each of the Investing Funds; and (c) the Central Funds to lend money to the Non-Money Market Funds.

Applicants' Legal Analysis

A. Investment of Cash Balances in the Central Funds

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company representing more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or, together with the securities of other investment companies, more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(d)(1)(J) of the Act provides that the SEC may exempt any person, security, or transaction, or class or classes of persons, securities or transactions from any provision of section 12(d)(1) if and to the extent that the exemption is consistent with the public interest and the protection of investors.

3. Applicants request relief under section 12(d)(1)(J) to permit each Investing Fund to use Cash Balances to acquire shares of the Central Funds in excess of the percentage limits in section 12(d)(1)(A) of the Act. Applicants state that each Investing Fund's aggregate investment of Cash Balances in shares of the Central Funds will not exceed the greater of 25% of the Investing Fund's total assets or $10 million. Applicants' proposal also would permit the Central Funds to sell their securities to the Investing Funds in excess of the percentage limitations in section 12(d)(1)(B) of the Act. Applicants represent that, other than to effect the Interfund Lending Agreements, the Central Funds will not acquire shares of any other investment company in excess of the limitations contained in section 12(d)(1)(A) of the Act.

4. Applicants state that none of the abuses meant to be addressed by section 12(d)(1)(A) is created by the proposed investment of Cash Balances in the Central Funds. Applicants state that the proposed arrangement will not result in an inappropriate layering of either sales charges or investment advisory fees. Shares of the Central Funds sold to the Investing Funds will not be subject to a sales load, redemption fee, distribution fee under a plan adopted in accordance with rule 12b–1 under the Act, or service fee (as defined in rule 2830(b)(9) of the Conduct Rules of the National Association of Securities Dealers, Inc. (''NASD'')). In addition, in connection with approving any advisory contract, the Board of each Investing Fund, including a majority of the Independent Trustees, will consider to what extent, if any, the advisory fees charged to the Investing Fund by the Adviser should be reduced to account for reduced services provided to the Investing fund by the Adviser as a result of Cash Balances being invested in the Central Funds.

5. Applicants also state that there is no threat of redemption to gain undue influence over the Investing funds. The Advisers will serve as investment advisers to each of the Investing Funds and the Central Funds. Applicants also state that due to the highly liquid nature of the Central Funds' portfolios, there will be no need to maintain any special reserve or balances to meet redemptions by the Investing Funds.

6. Sections 17(a)(1) and 17(a)(2) of the Act make it unlawful for an affiliated person of a registered investment company, or any affiliated person of the affiliated person (''Second Tier Affiliate''), acting as principal, to sell or purchase any security to or from the company. Section 2(a)(3) of the Act defines an ''affiliated person'' to include any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person; any person directly or indirectly controlling, controlled by, or under common control with the other person; and in the case of an investment company, its investment adviser.

7. Applicants state that, as members of the same complex of funds, with a common investment adviser or advisers that are under common control, the Funds may be deemed to be under common control and, thus, the Funds may be deemed to be affiliated persons. Applicants also state that because an Investing Fund may own more than 5% of a Central Fund's outstanding voting securities, the Investing Fund and the Central Fund may be deemed to be affiliated persons and the Investing Fund a Second Tier Affiliate of other Investing Funds that own more than 5% of the Central Fund's shares. As a result, the sale of shares of the Central Funds to the Investing Funds and the redemption of the shares would be prohibited under section 17(a) of the Act.

8. Section 17(b) of the Act authorizes the SEC to exempt a transaction from section 17(a) of the Act if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

9. Section 6(c) of the Act authorizes the SEC to exempt any person or transaction from any provision of the Act if the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provision of the Act.

10. Applicants maintain that their request for relief to permit the purchase and redemption of shares of the Central Funds by the Investing Funds satisfies the standards in sections 6(c) and 17(b). Applicants note that shares of the Central Funds will be purchased and redeemed at their net asset value, the same consideration paid and received for these shares by any other shareholder. In addition, applicants state that the Investing Funds will retain their ability to invest Cash Balances directly in money market instruments as authorized by their respective investment objectives and policies if

they believe they can obtain a higher rate of return or for any other reason. Each Central Fund reserves the right to discontinue selling shares to any of the Investing Funds if its Board determines that the sale will adversely affect its portfolio management and operations.

11. Section 17(d) of the Act and rule 17d–1 under the Act prohibit an affiliated person of an investment company, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates. Applicants state that each Investing Funds, by purchasing shares of the Central Funds, each Adviser, by managing the assets of the Investing Funds invested in the Central Funds, and the Central Funds, by selling shares to and redeeming shares from the Investing Funds, could be deemed to be participants in a joint arrangement within the meaning of section 17(d) and rule 17d–1.

12. Rule 17d–1 under the Act permits the SEC to approve a joint transaction covered by the terms of section 17(d). In determining whether to approve a transaction, the SEC considers whether the investment company's participation in the joint enterprise is consistent with the provisions, policies, and purposes of the Act, and the extent to which the participation is on a basis different from or less advantageous than that of other participants. Applicants submit that the Funds will participate in the proposed transactions on the same basis and will be indistinguishable from any other shareholder account maintained by the Central Funds and that the transactions will be consistent with the Act. Thus, Applicants submit that the proposed transactions meet the standards for relief under rule 17d–1.

B. Interfund Lending Program

1. Section 17(a)(3) of the act generally prohibits any affiliated person or Second Tier Affiliate of a registered investment company from borrowing money or other property from the company. Section 21(b) of the Act generally prohibits any registered management investment company from lending money or other property to any person if that person controls or is under common control with the company. As noted above, applicants state that the Funds may be under common control by virtue of having the Advisers as their common investment advisers, and may be affiliated persons also because the Non-Money Market Funds may hold more than 5% of the shares of the Central Funds. As a result, the Central Funds would be prohibited from lending to the Non-Money Market Funds under sections 17(a)(3) and 21(b) of the Act. Applicants request relief under sections 6(c) and 17(b) of the Act from sections 17(a)(3) and 21(b).

2. Applicants submit that sections 17(a)(3) and 21(b) of the Act were intended to prevent a person with potential adverse interests to and influence over the investment decisions of a registered investment company form causing or inducing the investment company to engage in lending transactions that unfairly inure to the benefit of that person and that are detrimental to the best interests of the investment company and its shareholders. Applicants assert that the proposed Interfund Loans do not raise these concerns because: (a) PIMCO will administer the program as a disinterested fiduciary; (b) all Interfund Loans will consist only of uninvested cash reserves that the Central Funds otherwise would invest in short-term instruments consistent with their investment objectives and policies; (c) the Interfund Loans would not expose the Non-Money Market Funds or the Central Funds to greater risk than other similar investments; (d) the Central Funds will receive interest at a rate higher than they could obtain through other similar investments; and (e) the Non-Money Market Funds would pay interest at a rate lower than otherwise available to them and avoid the up-front commitment fees associated with committed lines of credit. Moreover, applicants submit that the other conditions in the application would effectively preclude the possibility of any Fund obtaining an undue advantage over any other Fund.

3. As noted above, section 17(a)(1) generally prohibits an affiliated person or a Second their Affiliate of a registered investment company from selling any securities or other property to the company. Also as discussed above, section 12(d)(1)(A) of the Act generally makes it unlawful for a registered investment company except in accordance with the limitations set forth in that section. Applicants state that the obligation of a Non-Money Market Fund to repay an Interfund Loan may constitute a security under sections 17(a)(1) and 12(d)(1). Section 12(d)(1)(J) provides that the SEC may exempt persons or transactions from any provision of section 12(d)(1) if and to the extent such exception is consistent with the public interest and the protection of investors. Applicants contend that the standards under sections 6(c), 17(b) and 12(d)(1)(J) are satisfied for all the reasons set forth above in support of their request for relief from sections 17(a)(3) and 21(b) and for the reasons discussed below.

4. Applicants state that section 12(d)(1)(A) was intended to prevent the pyramiding of investment companies in order to avoid duplicative costs and fees attendant upon multiple layers of investment companies. Applicants note that there would be no duplicative costs or fees to the Funds or their shareholders, and that PIMCO would receive no additional compensation for its services in administering the credit facility. Applicants also note that the purpose of the credit facility is to same money for all participating Funds by reducing the costs paid by Non-Money Market Funds and increasing returns for the Central Funds.

5. Section 18(f)(1) prohibits registered open-end investment companies from issuing any senior security, except that a company is permitted to borrow from any bank, if immediately after the borrowing, there is an asset coverage of at least 300% for all borrowings of the company. Under section 18(g) of the Act, the term ''senior security'' includes any bond, debenture, note, or similar obligation or instrument constituting a security and evidencing indebtedness. Applicants request exemptive relief from section 18(f)(1) of the Act to the limited extent necessary to implement the Interfund Loans (because the Central Funds are not banks).

6. Applicants submit that granting relief under section 6(c) is appropriate because the Non-Money Market Funds will remain subject to the requirement of section 18(f)(1) that all borrowings of each Non-Money Market Fund, including combined interfund and bank borrowings, have at least 300% asset coverage. Based on the conditions and safeguards described in the application, applicants also submit that to allow the Non-Money Market Funds to borrow from the Central Funds pursuant to the proposed credit facility is consistent with the purposes and policies of section 18(f)(1).

7. As noted above, section 17(d) of the Act and rule 17d–1 thereunder generally prohibit any affiliated person or Second Tier Affiliate of a registered investment company, when acting as principal, from effecting any joint transaction in which the company participates unless the transaction is approved by the SEC. Rule 17d–1 provides that in passing upon applications for exemptive relief from section 17(d), the SEC will consider whether the participation of a registered investment company in a joint enterprise on the basis proposed is consistent with the provisions, policies, and purposes of the Act and the extent to which the company's participation is

on a basis different from or less advantageous than that of other participants. Applicants request an order under rule 17d–1 with respect to the proposed credit facility. Applicants submit that the proposed transactions meet these standards for the reasons discussed below.

8. Applicants maintain that the Interfund Loans are consistent with the provisions, policies and purposes of the Act in that they offer both reduced borrowing costs and enhanced returns on loaned funds to all participating Funds and their shareholders. Applicants note that each Fund would have an equal opportunity to borrow and lend on equal terms consistent with its investment policies and fundamental investment limitations. Applicants therefore believe that each Fund's participation in the Interfund Loans will be on terms which are no different from or less advantageous than that of other participating Funds.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

Investment of Cash Balances in the Central Funds

1. The shares of the Central Funds sold to and redeemed by the Investing Funds will not be subject to a sales load, redemption fee, distribution fee under a plan adopted in accordance with Rule 12b–1 under the Act, or service fee (as defined in Rule 2830(b)(9) of the National Association of Securities Dealers' Conduct Rules).

2. No Central Fund will acquire securities of any other investment company in excess of the limits contained in Section 12(d)(1)(A) of the Act, except as permitted by an SEC order governing interfund loans.

3. Before the next meeting of the Board of an Investing Fund that invests in the Central Funds is held for the purpose of reviewing, voting on, and renewing an investment advisory contract of the Investing Fund, the Adviser of the Investing Fund, as part of its presentation to the Board pursuant to Section 15(c) of the Act, will provide the Board with specific information regarding the approximate cost to the Adviser of, or the portion of the investment advisory fee under the existing investment advisory agreement attributable to, managing the Uninvested Cash of the Investing Fund that may be invested in the Central Funds. Before approving any investment advisory contract for an Investing Fund, the Board of the Investing Fund, including a majority of the Independent Trustees, shall consider to what extent, if any, the investment advisory fees charged to the Investing Fund by the Adviser should be reduced to account for reduced services provided to the Investing Fund by the Adviser as a result of Uninvested Cash being invested in the Central Funds. The minute books of the Investing Fund will record fully the Board's consideration in approving the investment advisory contract, including the consideration relating to the fees referred to above.

4. An Investing Fund may invest Uninvested Cash in, and hold shares of, the Central Funds only to the extent that the Investing Fund's aggregate investment of Uninvested Cash in the Central Funds does not exceed the greater of 25% of the Investing Fund's total assets or $10 million. For purposes of this limitation, each Investing Fund will be treated as a separate investment company.

5. Each Investing Fund and Central Fund shall be advised by an Adviser.

6. Investment of Cash Balances by an Investing Fund in shares of the Central Funds will be consistent with each Investing Fund's respective investment restrictions and policies as set forth in its prospectus and SAI.

7. Before an Investing Fund may participate in a securities lending program, a majority of the Board, including a majority of the Independent Trustees, will approve the Investing Fund's participation in the securities lending program. Such Trustees also will evaluate the securities lending program and its results no less frequently than annually and determine that any investment of Cash Collateral in the Central Funds is in the best interest of the shareholders of the Investing Fund.

Interfund Lending Agreements

1. The interest rate to be charged to the Non-Money Market Funds under the Interfund Lending Agreements will be the average of the Repo Rate and the Bank Loan Rate.

2. On each business day, PIMCO will compare the Interfund Loan Rate with the Bank Loan Rate and the Repo Rate and will make cash available for Interfund Loans only if the Interfund Loan Rate is more favorable to the Central Funds than the Repo Rate and more favorable to the Non-Money Market Fund than the Bank Loan Rate.

3. If a Non-Money Market Fund has outstanding borrowings, any Interfund Loans to the Non-Money Market (a) will be at an interest rate equal to or lower than any outstanding bank loan, (b) will be secured at least on an equal priority basis with at least an equivalent percentage of collateral to loan values as any outstanding bank loan that requires collateral, (c) will have a maturity no longer than any outstanding bank loan (and in any event not over seven days), and (d) will provide that, if an event of default occurs under any agreement evidencing an outstanding bank loan to the Non-Money Market Fund, that event of default will automatically (without need for action or notice by the lending Central Funds) constitute an immediate event of default under the Interfund Lending Agreement entitling the lending Central Funds to call the Interfund Loan (and exercise all rights with respect to any collateral) and that such call will be made if the lending bank exercises its right to call its loan under its agreement with the Non-Money Market Fund.

4. A Non-Money Market Fund may make an unsecured borrowing through an Interfund Lending Agreement if its outstanding borrowings from all sources immediately after the interfund borrowing total 10% or less of its total assets; provided that if the Non-Money Market Fund has a secured loan outstanding from any other lender, including but not limited to the Central Funds, the Non-Money Market Fund's interfund borrowing will be secured on at least an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding loan that requires collateral. If a Non-Money Market Fund's total outstanding borrowings immediately after the interfund borrowing will be greater than 10% of its total assets, the Fund may borrow on a secured basis only. A Non-Money Market Fund may not borrow through the credit facility or from any other source if its total outstanding borrowings immediately after the interfund borrowing would exceed the limits imposed by Section 18 of the Act.

5. Before any Non-Money Market Fund that has outstanding interfund borrowings may, through additional borrowings, cause its outstanding borrowings from all sources to exceed 10% of its total assets, the Non-Money Market Fund much first secure each outstanding Interfund Loan by the pledge of segregated collateral with a market value equal to at least 102% of the outstanding principal value of the loan. If the total outstanding borrowings of a Non-Money Market Fund with outstanding Interfund Loans exceed 10% of its assets for any other reason (such as decline in net asset value or because of shareholder redemptions), the Non-Money Market Fund will within one business day thereafter: (a) Repay all its outstanding Interfund

Loans, (b) reduce its outstanding indebtedness to 10% or less of its total assets, or (c) secure each outstanding Interfund Loan by the pledge of segregated collateral with a market value equal to at least 102% of the outstanding principal value of the loan until the Non-Money Market Fund's total outstanding borrowings cease to exceed 10% of its total assets, at which time the collateral called for by this condition shall no longer be required. Until each Interfund Loan that is outstanding at any time that a Non-Money Market Fund's total outstanding borrowings exceeds 10% is repaid or the Non-Money Market Fund's total outstanding borrowings exceed 10% of its total assets, Non-Money Market Fund will mark the value of the collateral to market each day and will pledge such additional collateral as is necessary to maintain the market value of the collateral that secures each outstanding Interfund Loan to at least 102% of the outstanding principal value of the loan.

6. A Central Fund may not lend to a Non-Money Market Fund if the loan will cause the Central Fund's aggregate outstanding loans through the credit facility to exceed 15% of its net assets at the time of the loan.

7. A Central Fund's Interfund Loans to any one Non-Money Market Fund shall not exceed 5% of the Central Fund's net assets.

8. The duration of Interfund Loans will be limited to the time required to receive payment for securities sold to cover either shareholder redemptions or ''sales fails,'' but in no event more than seven days. Loans effected within seven days of each other will be treated as separate loan transactions for purposes of this condition.

9. A Non-Money Market Fund's borrowings through Interfund Loans, as measured on the day the most recent loan was made, will not exceed the greater of 125% of the Non-Money Market Fund's total net cash redemptions and 102% of sales fails for the preceding seven calendar days.

10. Each Interfund Loan may be called on one business day's notice by the Central Fund and may be repair on any day by the Non-Money Market Fund.

11. A Fund's participation in the Interfund Loans must be consistent with its investment policies and limitations and organizational documents.

12. PIMCO will calculate total Fund borrowing and lending demand, and allocate loans on an equitable basis among the Non-Money Market Funds without intervention of the portfolio manager of the Funds. PIMCO will not solicit cash for Interfund Loans from the Central Funds or prospectively publish or disseminate loan demand data to portfolio managers. PIMCO will invest any amounts remaining after satisfaction of borrowing demand in accordance with the standing instructions from the Central Funds' portfolio managers or return remaining amounts for investment directly by the portfolio manager of each Central Fund.

13. PIMCO will monitor the interest rates charged and the other terms and conditions of the Interfund Loans and will make a quarterly report to each Fund's Board concerning the participation of the Fund in the Interfund Loans and the terms and other conditions of any extensions of credit thereunder.

14. The Board of each Fund, including a majority of the Independent Trustees: (a) Will review no less frequently than quarterly the Fund's participation in the Interfund Loans during the preceding quarter for compliance with the conditions of any order permitting such transactions; (b) will establish the formula used to determine the interest rate on Interfund Loans and review no less frequently than annually the continuing appropriateness of the formula; and (c) will review no less frequently than annually the continuing appropriateness of the Fund's participation in the Interfund Loans.

15. In the event an Interfund Loan is not paid according to its terms and such default is not cured within two business days from its maturity or from the time the Central Fund makes a demand for payment under the provisions of the Interfund Lending Agreement, PIMCO will promptly refer such loan for arbitration to an independent arbitrator selected by the Board of any Fund involved in the loan, who will serve as arbitrator of any disputes concerning Interfund Loans. The arbitrator will resolve any problem promptly, and the abritrator's decision will be binding on both Funds. The arbitrator will submit, at least annually, a written report to the Board setting forth a description of the nature of any dispute and the actions taken by the Funds to resolve the dispute. If the dispute involves Funds with separate Boards, the Board of each Fund will select an independent arbitrator that is satisfactory to each Fund.

16. Each Fund will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any Interfund Loans occurred, the first two years in an easily accessible place, written records of all such transactions setting forth a description of the terms of the transaction, including the amount, the maturity, and the rate of interest on the loan, the rate of interest available at the time on short-term repurchase agreements and bank borrowings, and such other information presented to the Fund's Board in connection with the review required by conditions 13 and 14.

17. PIMCO will prepare and submit to each Fund's Board for review an initial report describing the operations of the Interfund Loans and the procedures to be implemented to ensure that all Funds are treated fairly. After the Interfund Loans commence, PIMCO will report on the operations of the Interfund Loans at the Board's quarterly meetings.

In addition, for two years following the commencement of the Interfund Loans, the independent public accountant for each Fund shall prepare an annual report that evaluates PIMCO's assertion that it has established procedures reasonably designed to achieve compliance with the conditions of the order. The report shall be prepared in accordance with the Statement on Standards for Attestation Engagements No. 3 and it shall be filed pursuant to Item 77Q3 of Form N–SAR. In particular, the report shall address procedures designed to achieve the following objectives: (a) That the Interfund Loan Rate will be higher than the Repo Rate but lower than the Bank Loan Rate; (b) compliance with the collateral requirements as set forth in the application; (c) compliance with the percentage limitations on interfund borrowing and lending; (d) allocation of interfund borrowing and lending demand in an equitable manner and in accordance with procedures established by the Board of each Fund; and (e) that the interest rate on any Interfund Loan does not exceed the interest rate available on any third party borrowings of the Fund at the time of the Interfund Loan.

After the final report is filed, the Funds' external auditors, in connection with their Fund audit examinations, will continue to review the Interfund Loans for compliance with the conditions of the application and their review will form the basis, in part, of the auditor's report on internal accounting controls in Form N–SAR.

18. No Fund will participate in the Interfund Loans unless it has fully disclosed in its SAI and any other appropriate disclosure document all material facts about its intended participation.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–27078 Filed 10–26–01; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25222; File No. 812–12606]

Hartford Life Insurance Company, et al., Notice of Application

October 23, 2001.

AGENCY: Securities and Exchange Commission (the ''Commission'').

ACTION: Notice of an application for an order pursuant to section 11(a) of the Investment Company Act of 1940 (the ''Act'') approving the terms of an offer of a longevity reward rider (the ''LRR'') to owners of certain variable annuity contracts (the ''Contracts'').

SUMMARY OF APPLICATION: Hartford Life Insurance Company (''Hartford Life''), Hartford Life and Annuity Insurance Company (''Hartford Life and Annuity,'' together with Hartford Life, ''Hartford''), Hartford Life Insurance Company Separate Account Three (''HL Account Three''), Hartford Life and Annuity Insurance Company Separate Account Three (''HLA Account Three,'' together with the HL Account Three, the ''Separate Accounts''), and Hartford Securities Distribution Company, Inc. (''HSD'') seek an order approving the terms of a proposed offer of a rider for certain existing variable annuity contract (the ''Contracts'') issued by Hartford Life and Hartford Life and Annuity that reduces or waives certain charges and imposes a new Contingent Deferred Sales Charge (''CDSC'') on premium payments made before or after the rider's issue date (the ''Rider Date'').

APPLICANTS: Hartford Life, Hartford Life and Annuity, HL Account Three, HLA Account Three, and HSD (collectively, ''Applicants'').

FILING DATE: This application was filed on August 21, 2001.

HEARING OR NOTIFICATION HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on November 14, 2001, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC, 20549–0609. Applicants, Michael Stobart, Esq., Hartford Life Insurance Company, Inc., 200 Hopmeadow Street, Simsbury, CT 06089.

FOR FURTHER INFORMATION CONTACT: Rebecca A. Marquigny, Senior Counsel, or Lorna MacLeod, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the Application; the complete Application is available for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. Hartford Life is a stock life insurance company originally incorporated under the laws of Massachusetts on June 5, 1902, and subsequently re-domiciled to Connecticut. Hartford life is engaged in the business of writing individual and group life insurance and annuity contracts in the District of Columbia and all states. Hartford Life is a subsidiary of Hartford Fire Insurance Company. Hartford Life is ultimately controlled by The Hartford Financial Services Group, Inc., a Delaware corporation whose stock is traded on the New York Stock Exchange. For purposes of the Act, Hartford Life is the depositor and sponsor of the HL Account Three, as those terms have been interpreted by the Commission with respect to variable life insurance and variable annuity separate accounts.

2. Hartford Life and Annuity is a stock life insurance company originally incorporated under the laws of Wisconsin on January 9, 1956, and subsequently redomiciled to Connecticut. Hartford Life and Annuity is engaged in the business of writing individual and group life insurance and annuity contracts in Puerto Rico, the District of Columbia and all states but New York. Hartford Life and Annuity is a subsidiary of Hartford Fire Insurance Company. Hartford Life and Annuity is ultimately controlled by The Hartford Financial Services Group, Inc., a Delaware corporation whose stock is traded on the New York Stock Exchange. For purposes of the Act, Hartford Life and Annuity is the depositor and sponsor of the HLA Account Three, as those terms have been interpreted by the Commission with respect to variable life insurance and variable annuity separate accounts.

3. Hartford Life established the HL Account Three on June 22, 1994, and Hartford Life and Annuity established the HLA Account Three on June 22, 1994, as segregated investment accounts under Connecticut law. Under Connecticut law, the assets of the HL Account Three attributable to the Contracts, through which interests in HL Account Three are issued, are owned by Hartford Life, but are held separately from all other assets of Hartford Life for the benefit of the owners of, and the persons entitled to payment under, Contracts. Similarly, the assets of the HLA Account Three attributable to the Contracts, through which interests in the HLA Account Three are issued, are owned by Hartford Life and Annuity, but are held separately from all other assets of Hartford Life and Annuity for the benefit of the owners of, and the persons entitled to payment under, those Contracts. Consequently, such assets in each Separate Account are not chargeable with liabilities arising out of any other business that Hartford Life and Hartford Life and Annuity may conduct. Income, gains and losses, realized and unrealized, from the assets of each of these Separate Accounts are credited to or charged against that Separate Account without regard to the income, gains or loses arising out of any other business that Hartford Life and Hartford Life and Annuity may conduct. Each Separate Account is a ''separate account'' as defined by Rule 0–1(e) under the Act, and is registered with the Commission as a unit investment trust.

4. The assets of the HL Account Three support variable annuity Contracts, and interests in the HL Account Three offered through such Contracts have been registered under the Securities Act of 1933 (the ''1933 Act'') on Form N–4. The assets of the HLA Account Three support variable annuity Contracts, and interests in the HLA Account Three offered through such Contracts have been registered under the 1933 Act on Form N–4.

5. HSD is registered with the Commission as a broker-dealer under the Securities Exchange Act of 1934 and is a member of the National Association of Securities Dealers, Inc. HSD is the principal underwriter for the Contracts and for other Hartford variable insurance products. HSD is an affiliate

of Hartford Life and Hartford Life and Annuity.

6. The Contracts are flexible premium deferred variable annuity contracts. The annuity Contract provide for the accumulation of values on variable basis, fixed basis, or both, during the accumulation period, and provide settlement or annuity payment options on a variable basis, fixed basis, or both.

7. At the end of the accumulation period, the Contract owner elects whether to receive a ''lumb sum'' payment of the Contract's accumulated value, or to receive that value under one of several other payment options that Hartford offers. While some of these payment options provide payments for a period that includes the life of an ''annuitant,'' others do not.

8. The Contracts incorporate many other features, including several ''death benefit'' options, partial and full surrender rights, transfer privileges, and other optional rider benefits.

9. In addition to any charges associated with the underlying mutual funds, the charges under the Contracts are as follows:

• A Contingent Deferred Sales Charge (''CDSC'') may be assessed against each premium payment withdrawn or surrendered from a contract. The length of time from receipt of the premium payment to the time of withdrawal or surrender determines the amount of the CDSC. During the first seven Contract years, withdrawals or surrenders are deemed to be withdrawn first from premiums paid, in the order in which such premiums were received, and then from earnings. After the seventh Contract year, all withdrawals or surrenders are deemed to be withdrawn first from earnings, then from premium payments in the order in which such premiums were received. The CDSC is applied to premiums withdrawn in the percentage shown in the following table:

Length of time (in years) from premium payment	Surrender charge (percent)
1	6
2	6
3	5
4	5
5	4
6	3
7	2
8 or more	0

• Each Contract year, an amount equal to a specific percentage of total premium payments paid as of the date of the withdrawal (''Annual Withdrawal Amount'') may be withdrawn without being subject to any otherwise applicable CDSC. The Annual Withdrawal Amount under a Contract is currently 10%.

• An annual contract maintenance charge of $30 is assessed on each Contract anniversary date or, when applicable, the date on which the Contract is fully surrendered. This fee will be waived if the Contract's account value exceeds $50,000 on the Contract's anniversary date.

• An administrative charge is assessed on a daily basis at an annualized rate of 0.15% of the Contract's account value invested in the Separate Accounts.

• A mortality and expense risk charge is assessed on a daily basis at an annualized rate of 1.25% of the Contract's account value invested in the Separate Accounts.

• An optional Death Benefit Rider is available for an additional charge assessed on a daily basis at an annualized rate of 0.15% of the Contract's account value invested in the Separate Accounts.

• A charge corresponding to any applicable state premium taxes.

10. Hartford now proposes to offer a Longevity Reward Rider (the ''LRR'') to owners of certain existing Contracts. The additional benefits under the LRR include:

• A reduced mortality and expense risk charge assessed on a daily basis at an annualized rate of 1.15% of a Contract's account value invested in the Separate Accounts; and

• A new CDC schedule with a lower maximum percentage (5%) and of shorter duration (5 years), applies to the withdrawal or surrender of any premium payments made after the LRR is added to the Contract.

11. After the LRR is added to a Contract (''Rider Date''), a new five-year CDSC schedule (''New Schedule'') applies to all withdrawals or surrenders made after the Rider Date and supplants the original CDSC schedules for the Contacts. Under the New Schedule, withdrawals or surrenders made during the first five years from the Rider Date are taken first from premiums paid, in the order such premiums were received, and then from earnings. After the fifth year from the Rider Date, all withdrawals or surrenders are taken first from earnings, then from premium payments, in the order such payments were received.

12. The New Schedule applies to all premium payments withdrawn or surrendered, whether made before or after the Rider Date, as shown in the following table. For premium payments made after the Rider Date, the five-year period runs from the date of that premium payments. For premium payments made before the Rider Date, the five-year period runs from the Rider Date.

Length of time (in years) from premium payment	Surrender charge (percent)
1	5
2	4
3	3
4	2
5	1
6	0

13. The same exceptions that apply to the Contract's basic CDSC will also apply to the New Schedule. Specifically, no CDSC will be imposed: (a) At the time an Annuity Payment Option commences; (b) upon the death of a Contract owner or annuitant; (c) upon amounts withdrawn to satisfy any applicable minimum distribution requirements under the Internal Revenue Code; or (d) for amounts withdrawn which are within the limits of the Annual Withdrawal Amount. The Annual Withdrawal Amount is currently 10%.

14. If withdrawn or surrendered after the Rider Date, premium payments made before the Rider Date are subject to a CDSC for an additional five years, even if they were no longer subject to a CDSC under the Contracts. For example, if the LRR were purchased in the eighth Contract year, the initial premium would no longer be subject to a CDSC under the Contract. However, upon purchase of the LRR, the initial premium becomes subject to a CDSC for five years after the Rider Date. Moreover, until withdrawals or surrenders are taken first from ''earnings'' and then from premiums (*i.e.,* five years after the Rider Date) more of the amount withdrawn or surrendered may be subject to a CDSC that would be the case under Contracts without the LRR because the surrender is deemed to be withdrawn first from premiums and then from earnings.

15. Except for the New Schedule, the LRR will not result in any increase in or imposition of any charge. Except for the potential application of the New Schedule to premium made before the Rider Date to which no CDSC would apply under the Contracts absent the LRR, every aspect of a Contract will be at least as favorable after the LRR is added as it was before.

16. Further, adding the LRR to a Contract will have no adverse tax consequences to Contract owners.

17. The LRR will only be available to Contract owners who: (a) Have maintained their Contracts for at least seven years, and either (b) have not

made any premium payments within the previous two years or (c) have a CDSC less than or equal to two percent of current Contract value. For those Contract owners electing the LRR who made premium payments prior to the Rider Date, that remain subject to a CDSC on the Rider Date, that charge will be waived and the New Schedule will apply. Contract owners will not be permitted to elect for the LRR to apply to part of a Contract and not to the rest. Any election of the LRR must apply to the whole Contract.

18. After an initial notification of the offer in prospectuses for the Contracts or other communication to Contract owners, the LRR will be offered by providing eligible owners who express an interest in learning the details of the offer, in addition to such prospectus, a separate document explaining the offer (''the Offering Document'').

19. The Offering Document will advise Contract owners that the offer is specifically designed for those Contract owners who intend to continue to hold their Contracts as long-term investment vehicles. The Offering Document will state that the offer is not intended for all Contract owners, and that it is not appropriate for any Contract owner who anticipates surrendering all or a significant part of his or her Contract within the next five years. The Offering Document will encourage Contract owners to carefully evaluate their personal financial situation when deciding whether to accept or reject the offer of the LRR. In addition, the Offering Document will explain that the New Schedule will not apply to amounts withdrawn in a Contract year that do not exceed the Annual Withdrawal Amount, or to premium payments maintained until expiration of the New Schedule. In this regard, the Offering Document will state in plain English that, if a significant amount of the Contract's value is surrendered or withdrawn during the five years following the Rider Date, (a) the LRR's benefits may be more than offset by the New Schedule; and (b) a Contract owner may be worse off than if he or she had rejected the offer.

20. To accept the LRR, an owner must complete an election form. This election form will include the disclosure set forth in Condition No. 1 under ''Conditions'' below.

Applicants' Legal Analysis

1. Section 11(a) of the Act makes it unlawful for any registered open-end company, or any principal underwriter for such a company, to make or cause to be made an offer to the holder of a security of such company, or of any other open-end investment company, to exchange that security for a security in the same or another such company on any basis other than the relative net asset values of the respective securities, unless the terms of the offer have first been submitted to and approved by the Commission.

2. Section 11(c) of the Act, in pertinent part, effectively requires that any offer of exchange of the securities of a registered unit investment trust for the securities of any other investment company be approved by the Commission, regardless of the basis of the exchange.

3. Congress enacted Section 11 to prevent ''switching'' (*i.e.,* ''the practice of inducing security holders of one investment company to exchange their securities for those of a different investment company) 'solely for the purpose of exacting additional selling charges.' '' According to the Commission, ''[I]nvestors in 'fixed trusts,' now known as unit investment trusts, were found to be particularly vulnerable to switching operations. In order to earn another sales commission, a UIT sponsor would often pressure unit holders into exchanging their units for those of another of the sponsor's trusts.''

4. Applicants assert that the LRR would not involve ''switching.'' Rather, the purpose of the LRR, as with other optional riders, is to enable Contract owners to enhance their Contracts without having to purchase a new variable annuity contract. In addition, because the LRR offers benefits to Contract owners, as described above, Applicants believe it cannot fairly be argued that the LRR's sole purpose is to exact additional selling charges (or any other type of charge).

5. Further, applicants assert that election of the LRR will not result in any duplicative charges and that the limited CDSC provided under the LRR is reasonable in relation to the benefits that the rider provides and the costs that Applicants will incur in providing those benefits. Applicants represent that those costs will include costs of developing and administering the LRR, the direct dollar costs of the charges that will be waived or reduced, the benefits that will be paid under the LRR, and the costs of distributing the LRR to Contract owners and educating them about it.

6. Applicants note that the New Schedule imposes a lower maximum CDSC and is shorter in duration than the schedules under the Contracts without the LRR. If the Contract owner makes no surrenders during the five years after the Rider Date, there is no possibility that a CDSC will be deducted that exceeds what would have been deducted absent the LRR. Moreover, even if premium payments are withdrawn during that five-year period, the New Schedule will apply only if the amount withdrawn exceeds the Annual Withdrawal Amount.

7. Applicants argue that the LRR will be offered only to Contract owners who already have demonstrated an ability to maintain their Contracts for substantial periods of time. The income taxes that are generally payable when earnings are withdrawn from a Contract, as well as the potential tax penalties that may apply to withdrawals made prior to an owner reaching age 59½, serve as additional motivations that encourage most owners to hold their Contracts for a substantial number of years. Any CDSC will be waived with respect to any amounts necessary to meet the minimum distribution requirements applicable to the Contract under federal tax law.

8. Applicants assert that, given the conditions described above, few Contract owners who add the LRR to their Contracts will ever be assessed any additional CDSC.

9. Applicants state that the primary benefit of the LRR is the .010% reduction in mortality and expense risk charge to Contract owners, which benefit is guaranteed and cannot be reduced or withdrawn.

10. Further, Applicants state that additional premium payments made after the LRR is added to a Contract will be subject only to the 5%/5-year New Schedule rather than the Contract's regular 6%/7-year CDSC schedule that would have applied to those same premium payments under the Contracts if the LRR had not been added to the Contract. Applicants assert that this is a substantial benefit to any Contract owner—including a surviving spouse of the Contract owner who is eligible to continue the Contract after the Contract owner's death—who may have an interest in making further premium payments.

11. In light of these considerations, Applicants assert that there is not any public policy or purpose under Section 11 (or otherwise) that would preclude offering the LRR under the terms and conditions stated herein.fund.

Applicants' Conditions

Applicants have consented to the following conditions:

1. The Offering Document will contain concise, plain English statements that: (a) The LRR is suitable only for Contract owners who expect to hold their Contract as long term investments; and (b) if a significant amount of the Contract's Value is

surrendered or withdrawn during the first five years after the Rider Date, the LRRs' benefits may be more than offset by that charge, and a Contract owner may be worse off if he or she had rejected the LRR.

2. The Offering Document will disclose in concise plain English the only aspect in which adding the LRR rider could disadvantage a Contract owner (*i.e.,* through the possible imposition of the New Schedule of CDSC).

3. A Contract owner choosing to add the LRR will complete and sign the election form, which will prominently restate in concise plain English the statements required in Condition No. 1, and return it to Hartford. If the election form is more than 2 pages long, Hartford will use a separate document to obtain the Contract owner's acknowledgement of the statements referred to in Condition No. 1 above.

4. Applicants will maintain and make available the following separately identifiable records, for the time periods specified below, for review by the Commission upon request: (a) Records showing the level of LRR purchases and how it relates to the total number of Contract owners eligible to acquire the LRR (at least quarterly as a percentage of the number eligible); (b) copies of any form of Offering Document, prospectus disclosure, election form, acknowledgement form, or offering letter, regarding the offering of the LRR including the dates(s) used, and copies of any other written materials or scripts for presentations used by registered representatives regarding the LRR, including dates used; (c) records showing information about each LRR purchase that occurs, including the Contract number; the election form (and separate acknowledgement form, if any, used to obtain the Contract owner's acknowledgement of the statements required in Condition No. 1 above); the date such election or acknowledgement form was signed; the date of birth; address and telephone number of the Contract owner; the issue date of the LRR; the amount of the Contract's value on that date; persistency information relating to the Contract (date of any subsequent CDSCs and CDSC paid); the registered representative's name, CRD number, firm affiliation, branch office address and telephone number; the name of the registered representative's broker-dealer; and thea mount of commission paid to the registered representative that relates to the LRR; and (d) logs showing any Contract owner complaints received by it about the LRR, state insurance department inquiries to it about the LRR, or litigation, arbitration or other proceedings to which it is a party regarding the LRR.

5. Applicants will include the following information on the logs referred to in Condition No. 4(d) above: date of complaint or commencement of proceeding; name and address of the person making the complaint or commencing the proceeding; nature of the complaint or proceeding; and persons names or involved in the complaint or proceeding.

6. Applicants will retain (i) the records specified in Conditions Nos. 4(a) and 4(d) above for six years from creation of the record; (ii) the records specified in Condition No. 4(b) above for six years after the date of last use; and (iii) the records specified in Condition No. 4(c) for seven years from the Rider Date.

Conclusion

For the reasons discussed above, Applicants assert (1) that the LRR offers substantial benefits to Contract owners, will be advantageous for the majority of owners to whom it will be offered, and does not contravene any policy or purpose of Section 11 and (2) that approval of Applicant's offer of the LRR as described, and subject to the conditions set forth, in the application is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. Applicants submit that the requested order should therefore be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–27077 Filed 10–26–01; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25221; File No. 812–12464]

Golden American Life Insurance Company, et al.

October 23, 2001.

AGENCY: The Securities and Exchange Commission (''SEC'' OR ''Commission'').

Summary of the Application

Applicants seek an order pursuant to Section 26(b) of the Investment Company Act of 1940 (''1940 Act''), approving substitution of shares of one registered management investment company with shares of another registered management investment company or transfer in-kind of securities held by one registered management investment company. Applicants also seen an order, pursuant to Section 17(b) of the 1940 Act, granting exemptions from Section 17(a) to permit Applicants to carry out the above-reference substitution by means of in-kind redemption and purchase.

APPLICANTS: Golden American Life Insurance Company (''Golden American''), Golden American Life Insurance Company Separate Account B (''Golden Separate Account B''), Equitable Life Insurance Company of Iowa (''Equitable''), Equitable Life Insurance Company of Iowa Separate Account A (''Equitable Separate Account A''), United Life and Annuity Insurance Company (''United''), United Life and Annuity Insurance Company Account One (''United Separate Account One''), and The GCG Trust (the ''GCG Trust'') (collectively, the ''Applicants'').

FILING DATE: The application (''Application'') was filed originally on March 1, 2001. It was subsequently amended and restated on September 26, 2001.

HEARING OR NOTIFICATION OF HEARING: An order granting the Application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 19, 2001, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESSES: For the Commission: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. For Applicants: Marilyn Talman, Esquire, Golden American Life Insurance Company, 1475 Dunwoody Drive, West Chester, Pennsylvania 19380.

FOR FURTHER INFORMATION CONTACT: Alison Toledo, Staff Attorney, or Lorna MacLeod, Branch Chief, Division of Investment Management, Office of Insurance Products, at 202–942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the Application. The complete Application

is available for a fee from the Public Reference Branch of the Commission.

Applicants' Representations

1. Golden American, Equitable and United are stock life insurance companies organized under the insurance laws of Delaware, Iowa, and Texas, respectively. Each is authorized to write variable annuity contracts in at least 47 states and the District of Columbia. Golden American, Equitable and United (collectively, ''Applicant Insurance Companies'') are wholly owned subsidiaries of ING Groep N.V. (''ING''), a global financial services holding company.

2. Golden Separate Account B, Equitable Separate Account A and United Separate Account One (collectively ''Applicant Separate Accounts'') are separate accounts for which one of the Applicant Insurance Companies serves as the sponsor and depositor. Golden American serves as sponsor and depositor of Golden Separate Account B; Equitable serves as sponsor and depositor of Equitable Separate Account A; United serves as the sponsor and depositor of United Separate Account One. Each Applicant Separate Account is a segregated asset account of its insurance company sponsor and each is registered under the 1940 Act as a unit investment trust. Each Applicant Separate Account is administered and accounted for as part of the general business of the Applicant Insurance Company of which it is a part. The income, gains or losses of such Separate Accounts are credited to or charged against the assets of each such separate account, without regard to income, gains or losses of such Applicant Insurance Company.

3. Each Applicant Separate Account serves as a funding vehicle for certain variable annuity and/or variable life contracts (''collectively, Variable Contracts'') written by the respective Applicant Insurance Companies. Applicant Separate Accounts are divided into separate subaccounts, each dedicated to owning shares of one of the investment options available under the Variable Contracts. The Variable Contracts are structured such that holders of any of the Variable Contracts (''Contractholders'') may select one or more of the investment options available under the contract held by allocating premiums payable under such contract to that subaccount of the relevant Applicant Separate Account that corresponds to the investment option desired. Thereafter, Contractholders accumulate funds, on a tax-deferred basis, based on the investment experience of the selected subaccount(s). Contractholders may, during the life of the contract, make unlimited transfers of accumulation values among the subaccounts available under the contract held, subject to any applicable administrative and/or transfer fees.

4. The Credit Suisse Warburg Pincus Trust, formerly the Warburg Pincus Trust, is registered under the 1940 Act as an open-end, management, series investment company. As of the date of the Application, the Credit Suisse Warburg Pincus Trust offers shares of four separate investment series, which are included in separate prospectuses each dated May 1, 2001.

5. The GCG Trust is registered under the 1940 Act as an open-end, management, series investment company. As of the date of the Application, the GCG Trust offers shares of 27 separate investment series, which are included in prospectuses dated May 1, 2001.

6. Under the terms of an investment advisory agreement between the GCG Trust and Directed Services, Inc. (''DSI'') (''Trust Management Agreement''), DSI manages the business and affairs of each of the several series of the Trust, subject to the control of the Board of Trustees. Under the Trust Management Agreement, DSI is authorized to exercise full investment discretion and make all determinations with respect to the investment of the assets of the respective series, but may, at its own cost and expense, retain portfolio managers for the purpose of making investment decisions and research information available to the Trust. DSI has retained ING Pilgrim Investments, Inc. (''ING Pilgrim'') as portfolio manager of the International Equity Series of the GCG Trust.

7. Pursuant to the Trust Management Agreement, DSI is responsible for providing the GCG Trust (or arranging and paying for the provision to the Trust) a comprehensive package of administrative and other services necessary for the ordinary operation of certain selected series of the GCG Trust, including the International Equity Series. This fee (''Unified Fee'') is calculated for the participating GCG Trust series based on a percentage of assets basis and in accordance with schedules that provide, for some of the GCG Trust series, including the International Equity Series, fee reductions at specified asset levels or ''break points.''

8. Applicant Insurance Companies have approved a proposal whereby the International Equity subaccounts would substitute securities issued by the International Equity Series of the GCG Trust for securities issued by the International Equity Portfolio of the Credit Suisse Warburg Pincus Trust, and the GCG Trust Board of Trustees has approved the transfer in-kind of portfolio securities from the International Equity Portfolio of the Credit Suisse Warburg Pincus Trust to the International Equity Series of the GCG Trust. Redemptions in kind will be handled in a manner consistent with the investment objectives, policies and diversification requirements of the International Equity Series of the GCG Trust. Consistent with Rule 17a–7(d) under the 1940 Act, no brokerage commissions, fees or other remuneration will be paid by the International Equity Portfolio of the Credit Suisse Warburg Pincus Trust, the International Equity Series of the GCG Trust, or Affected Contractholders in connection with the in-kind transactions.

9. Applicants state that although not identical, the investment objective and policies of the International Equity Portfolio of the Credit Suisse Warburg Pincus Trust best fit with those of the International Equity Series of the GCG Trust, as opposed to any other GCG Trust series, to assure that the essential objectives of Affected Contractholders can continue to be met. The International Equity Portfolio of the Credit Suisse Warburg Pincus Trust has a primary investment objective of long-term capital appreciation and the International Equity Series of the GCG Trust has a virtually identical primary investment objective of long-term growth of capital. Both portfolios are managed as diversified portfolios as defined under the 1940 Act. The International Equity Portfolio of the Credit Suisse Warburg Pincus Trust and the International Equity Series of the GCG Trust have substantially similar investment strategies of at least 65% of net assets in equity securities of issuers located in countries outside of the United States. Both may be invested significantly in securities of emerging markets. Applicant Insurance Companies have, therefore, concluded that the overall investment objectives of the International Equity Portfolio of the Credit Suisse Warburg Pincus Trust and the International Equity Series of the GCG Trust are sufficiently similar such that the International Equity Series of the GCG Trust is appropriate for substitution.

10. Applicants state that the Substitution is part of an overall business plan of Applicants to make its products, including the Variable Contracts, more competitive and more efficient to administer and oversee.

Applicants represent that the Substitution is appropriate because it will allow the Applicants to eliminate a portfolio with poor performance and place Contractholders in a position to participate in a portfolio with much better performance and lower overall expenses.

11. Applicants state that, as of the effective date of the Substitution (''Effective Date''), shares of the International Equity Portfolio of the Credit Suisse Warburg Pincus Trust held by the applicable subaccounts will be redeemed for cash or in-kind by Applicant Insurance Companies as follows: Applicant Insurance Companies on behalf of the international Equity Division of Applicant Separate Accounts will simultaneously place a redemption request with the International Equity Portfolio of the Credit Suisse Warburg Pincus Trust and a purchase order with the International Equity Series of the GCG Trust so that the purchase will be for the exact amount of the redemption proceeds. As a result, monies attributable to Contractholders currently invested in the International Equity Portfolio of the Credit Suisse Warburg Pincus Trust will be fully invested. Applicant Insurance Companies state that the Applicant Insurance Companies or their affiliates will pay all expenses and transactional costs related to the Substation, including brokerage fees which may arise from sales of portfolio securities by the International Equity Portfolio of the Credit Suisse Warburg Pincus Trust and purchases of new portfolio investments made by the International Equity Series of the GCG Trust with the proceeds from the Substitution which brokerage fees would normally be borne by the Fund and/or the Series, any legal and/or accounting fees. Affected Contractholders will not incur any additional fees or charges as a result of the Substitution, nor will their rights or the obligations under any of the Variable Contracts diminish in any way. Applicants further state that all redemption of shares of the International Equity Portfolio of the Credit Suisse Warburg Pincus Trust and purchases of shares of the International Equity Series of the GCG Trust will be effected at net asset value and in accordance with Rule 22c–1 under the 1940 Act.

12. Applicants state that shareholders of the affected Variable Contracts were mailed a prospectus supplement notifying them of the Applicants' filing of the Application. Prior to the Effective Date, each Affected Contractholder will be furnished with a second supplement setting forth the Effective Date and advising Affected Contractholders of their right to reconsider the Substitution and, if they so chose, at any time prior to the Effective Date, they may reallocate or withdraw amounts under their affected Variable Contract or otherwise terminate their interest thereof in accordance with the terms and conditions of their Variable Contract. All current Contractholders have received a prospectus containing a description of the International Equity Series of the GCG Trust and upon request another copy will be forwarded any Contractholder who requests one. Within five days after the Effective Date, Affected Contractholders will receive a notice (''Substitution Notice'') stating that shares of the International Equity Portfolio of the Credit Suisse Warburg Pincus Trust have been redeemed and that the shares of the International Equity Series of the GCG Trust have been substituted. The Substitution Notice will include a written confirmation showing the before and after accumulation values (which will not have changed as a result of the substitution) and detailing the transactions effected on behalf of the Affected Contractholder.

Terms of the Substitution

1. The International Equity Series of the GCG Trust has objectives and policies sufficiently similar to the objectives and policies of the International Equity Portfolio of the Credit Suisse Warburg Pincus Trust so that the objective of the Affected Contractholders can continue to be met.

2. The expense ratio of the International Equity Series of the GCG Trust will, immediately following the Effective Date and for a period of at least two years following the Effective Date, not exceed 1.28% of the average daily assets of the GCG Fund, which is 0.02% below the 2000 expense ratio of the Warburg Fund.

3. Affected Contractholders may reallocate, without incurring a reallocation charge or adding to their number of reallocations, or withdraw amounts under any affected variable Contract held or otherwise terminate their interest thereof at any time prior to the Effective Date, or within 30 days after the Effective Date, in accordance with the terms and conditions of such Variable Contract.

4. The Substitution will be effected at the net asset value of the respective shares in conformity with section 22(c) of the 1940 Act and Rule 22c–1 thereunder, without the imposition of any transfer or similar charge by Applicants.

5. The Substitution will take place at respective net asset value without change in the amount or value of any Variable Contract held by Affected Contractholders. Affected Contractholders will not incur any fees or charges as a result of the Substitution, nor will their rights or the obligations of Applicant Insurance Companies under such Variable Contracts be altered in any way. In addition, the Applicant Insurance Companies will not increase the Contract fees and charges currently being assessed by the Variable Contracts for a period of at least two years following the Substitutions.

6. The Substitution will be effected so that investment of securities will be consistent with the investment objectives, policies and diversification requirements of the International Equity Series of the GCG Trust. The International Equity Series of the GCG Trust will not be responsible for any brokerage commissions and fees for purchase of investments for the portfolio, except for those fees and commissions from purchase or sales of investment securities not directly related to the Substitution. No brokerage commissions, fees or other remuneration will be paid by the International Equity Series of the GCG Trust or the International Equity Portfolio of the Credit Suisse Warburg Pincus Trust or Affected Contractholders in connection with the Substitution.

7. Neither the Substitution nor the subsequent transactions will alter in any way the annuity, life or tax benefits afforded under the Variable Contracts held by any Affected Contractholder.

8. Applicant Insurance Companies will send to its Affected Contractholders within five (5) business days of the Substitution a copy of the Substitution Notice which will include a written confirmation showing the before and after accumulation values (which will not have changed as a result of the Substitution) and detailing the transactions effected on behalf of the respective Affected Contractholder with regard to the Substitution.

Applicants' Legal Analysis

1. Section 26(b) of the 1940 Act prohibits any depositor or trustee of a unit investment trust that invests exclusively in the securities of a single issuer from substituting the securities of another issuer without the approval of the Commission. Section 26(b) provides that such approval shall be granted by order of the Commission, if the evidence establishes that the substitution is consistent with the protection of

investors and the purposes of the 1940 Act.

2. Applicants request an order pursuant to section 26(b) of the 1940 Act approving the Substitution and related transactions. Applicants assert that the purposes, terms, and conditions of the proposed Substitution and related transactions are consistent with the protection of investors and the purposes fairly intended by the 1940 Act. Applicants further assert that the Substitution will not result in the type of costly forced redemption against which section 26(b) was intended to guard.

3. Section 17(a)(1) of the 1940 Act prohibits any affiliated person of a registered investment company, or an affiliated person of an affiliated person, from selling any security or other property to such registered investment company. Section 17(a)(2) of the 1940 Act prohibits any of the persons described above, from purchasing any security or other property from such registered investment company.

4. If Substitution is effected through an in-kind transfer of securities from the International Equity Portfolio of the Credit Suisse Warburg Pincus Trust to the International Equity Series of the GCG Trust through transfers to and from the Separate Accounts, the International Equity Portfolio of the Credit Suisse Warburg Pincus Trust could be said to be selling portfolio securities to an affiliate and the International Equity Series of the GCG Trust could be said to be purchasing portfolio securities from an affiliate.

5. Applicants request an order pursuant to section 17(b) of the 1940 Act exempting said redemptions and purchases or the in-kind transfer of portfolio securities from the provision of section 17(a) of that Act. Section 17(b) of the 1940 Act provides that the Commission may grant an order exempting a proposed transaction from section 17(a) if evidence establishes that; (i) the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; (ii) the proposed transaction is consistent with the investment policy of each registered investment company concerned; and (iii) the proposed transaction is consistent with the general purposes of the 1940 Act.

6. Applicants represent that the terms of the redemptions and purchases or the in-kind transfer are reasonable and fair and do not involve overreaching on the part of any person concerned and that the interest of Contractholders will not be diluted. The redemptions and purchases or the in-kind transfer will be done at values consistent with the policies of both the International Equity Portfolio of the Credit Suisse Warburg Pincus Trust and the International Equity Series of the GCG Trust. Applicant Insurance Companies and DSI will review all asset transfers to assure that the assets meet the objectives of the International Equity Series of the GCG Trust and that they are valued under the appropriate valuation procedures of the Series. The Applicants represent that the transactions are consistent with Rule 17a–7(d) under the 1940 Act, no brokerage commissions, fees or other remuneration will be paid by the International Equity Portfolio of the Credit Suisse Warburg Pincus Trust or the International Equity Series of the GCG Trust or Affected Contractholders in connection with the transactions, and that the transactions are consistent with the policies of each investment company involved and the general purposes of the 1940 Act, and comply with the requirements of section 17(b) of the 1940 Act.

7. Applicants represent that the purchase and sale transactions described in the Application will be effected based on the net asset value of the investment company shares held in the subaccounts and the value of the units of the subaccount involved. Therefore, there will be no change in value to any Contractholder.

Applicants' Conditions

The Substitution and related transactions described in the Application will not be completed unless all of the following conditions are met.

1. The Commission shall have issued an order (i) approving the Substitution under section 26(b) of the 1940 Act; and (ii) exempting the in-kind redemptions from the provisions of section 17(a) of the 1940 Act as necessary to carry out the transactions described in this Application.

2. Each Affected Contractholder will have been sent a copy of (i) a supplement informing shareholders of the Application; (ii) a prospectus for the International Equity Series of the GCG Trust; and (iii) a second supplement setting forth the Effective Date and advising Affected Contractholders of their right to reconsider the Substitution and, if they so choose, any time prior to the Effective Date, they may reallocate or withdraw amounts under their affected Variable Contract or otherwise terminate their interest thereof in accordance with the terms and conditions of their variable Contract.

3. Applicant Insurance Companies shall have satisfied themselves, that (i) the Variable Contracts allow the substitution of investment in the manner contemplated by the Substitution and related transactions described herein; (ii) the transactions can be consummated as described in this Application under applicable insurance laws; and (iii) that any regulatory requirements in each jurisdiction where the Variable Contracts are qualified for sale, have been complied with to the extent necessary to complete the transactions.

Within five business days of the Effective Date of the Substitutions, the Applicants will forward to Affected Contractholders a copy of the Substitution Notice.

Conclusion

Applicants assert that, for the reasons summarized above, the requested order approving the Substitution and related transactions involving redemptions should be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–27127 Filed 10–26–01; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44971; File No. SR–BSE–2001–06]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Boston Stock Exchange Amending the Transaction Fee Schedule and the Floor Operations Fee Schedule

October 23, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 29, 2001, the Boston Stock Exchange (''BSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by BSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's Transaction Fee Schedule to revise the monthly transaction related revenue the BSE must generate before it shares excess revenue with eligible firms. Additionally, the Exchange proposes to amend the Exchange's current Floor Operations Fee Schedule to include fees for the trading of securities listed on The Nasdaq Stock Market, Inc. (''Nasdaq'').

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, BSE included statements concerning the purpose of and the 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. BSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Revenue Sharing Program highlighted on the BSE's Transaction Fee Schedule. Currently, the minimum amount of monthly transaction related revenue the BSE must generate before it shares excess revenue with eligible member firms is $1,500,000. The BSE proposes to revise this amount to $1,700,000 to meet the budgeted costs of operating the Exchange in the upcoming fiscal year.

The Exchange also proposes to implement a transaction fees schedule for the trading of Nasdaq securities, similar to the transaction fee schedule currently in place for exchange-listed securities. However, three exceptions will apply. First, all Specialist Trade Processing Fees will be capped for all Nasdaq specialists for a period of two years, commencing with the inception of Nasdaq trading on the BSE. Presently, the Exchange caps these fees in instances in which there are competing specialists, under the Exchange's Competing Specialist Initiative, in listed securities. The BSE is not seeking to extend the Competing Specialist Initiative to the trading of Nasdaq securities at this time. Nevertheless, the Exchange proposes to extend similar Specialist Trade Processing Fee caps to Nasdaq specialists to allow the Nasdaq trading program to develop and mature over a two-year period.

The second exception applies to the way in which securities are ranked for transaction fee caps. Presently, the Exchange categorizes listed securities into various tiers for this purpose. The securities are categorized based on Consolidated Tape Association (''CTA'') Trade Rank. Obviously, this measure is not applicable to Nasdaq securities, so the Exchange is proposing to use Nasdaq share volume as an equivalent standard. The Nasdaq share volume will serve the same purposes as the CTA Trade Rankings, and will allow the Exchange to categorize Nasdaq securities in a similar fashion to listed securities, in various tiers.

Lastly, the Exchange proposes to ''pass through'' all third party fees billed to the Exchange on behalf of the specialists who are trading Nasdaq securities. The fees will pass through on a pro rata basis for all fixed fees, and on an actual basis for all variable fees.

2. Statutory Basis

BSE believes that the proposed rule change is consistent with the provisions of section 6(b)(4) [3] and section 6(b)(5) [4] of the Act, which require, among other things, that the BSE's rules be designed to provide for the equitable allocation of reasonable dues, fees and other charges among the Exchange's members and other persons using its facilities, that the BSE's rules must be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.[5]

B. Self-Regulatory Organization's Statement on Burden on Competition

BSE does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) [6] of the Act and Rule 19b–4(f)(2) thereunder [7] as establishing or changing a due, fee, or other charge paid solely by members of the BSE. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate, in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[8]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to File No. SR–BSE–2001–06 and should be submitted by November 19, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–27132 Filed 10–26–01; 8:45 am]

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[3] 15 U.S.C. 78f(b)(4).

[4] 15 U.S.C. 78f(b)(5).

[5] The Commission added Section 6(b)(4) of the Act to the Statutory Basis Section of the notice at the request of the BSE. Telephone discussion between John Boese, Attorney, BSE, and Christopher B. Stone, Attorney Advisor, Division of Market Regulation, Commission (Oct. 19, 2001).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(2).

[8] *See* Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44964; File No. SR–CBOE–2001–29]

Self-Regulatory Organizations; Chicago Board Options Exchange Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 to the Proposed Rule Change Relating to the Exchange's Delisting Criteria

October 19, 2001.

I. Introduction

On May 29, 2001, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') 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[2] thereunder, a proposed rule change amending the Exchange's delisting criteria. On August 3, 2001, the CBOE submitted Amendment No. 1 to the proposed rule change.[3] The proposed rule change was published for comment in the **Federal Register** on August 21, 2001.[4] The Commission received no comments on the proposal. On October 5, 2001, the CBOE submitted Amendment No. 2 to the proposed rule change.[5] This order approves the proposed rule change, as amended. In addition, the Commission solicits comments on Amendment No. 2 from interested persons.

II. Description of the Proposal

The proposed rule change, as amended, would modify Interpretation .01 to CBOE Rule 5.4, which governs the withdrawal of approval for securities underlying options traded on the Exchange, by reducing from $5 to $3 the guideline price used to determine whether an underlying security previously approved for Exchange options transactions continues to meet the exchange's listing requirements.[6] The proposed rule change would also amend Interpretation .02 to CBOE Rule 5.4 to reduce from $5 to $3 the price above which an underlying security must be traded before the Exchange may add additional series of options intra-day.[7] In addition, the proposed rule change would modify Interpretation .01 and Interpretation .02 to CBOE Rule 5.4, by reducing from six calendar months to one day, the amount of time the CBOE would be required to look back at the closing market price of the underlying security when determining if an underlying security previously approved for options transactions no longer meets the requirements for the continuance of such approval. Lastly, the proposed rule change would eliminate Interpretation .04 to CBOE Rule 5.4, which will no longer be needed in light of the above mentioned changes the instant proposed rule change would implement.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[8] and, in particular, the requirements of section 6 of the Act[9] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with section 6(b)(5) of the Act,[10] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest. The Commission believes that by limiting the determination of the closing price to trades occurring on the primary market and requiring that the stock price meet the minimum price on the primary market both at the close the day before and at the time the Exchange determines to add an intra-day series, the delisting criteria should continue to ensure that options traded on the CBOE are based on securities of companies that are financially sound and are still subject to adequate minimum standards. Therefore, the Commission believes that the CBOE's proposed rule change, as amended, should serve to protect investors and the public interest.

The Commission notes that the proposal and Amendment No. 1 were noticed for the full 21-day comment period and the Commission received no comments regarding the proposal, as amended. The Commission further notes that Amendment No. 2 made technical changes to the proposed rule change; accordingly, the Commission finds good cause pursuant to section 19(b)(2) of the Act[11] to accelerate approval of Amendment No. 2 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2, including whether Amendment No. 2 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change, as amended, between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–2001–29 and should be submitted by November 19, 2001.

V. Conclusion

For the foregoing reasons, the Commission finds that the proposal is consistent with the requirements of the Act and rules and regulations thereunder.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Patrick Sexton, Assistant General Counsel, CBOE, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated August 1, 2001 (''Amendment No. 1'').

[4] *See* Securities Exchange Act Release No. 44693 (August 13, 2001), 66 FR 43937.

[5] *See* letter from Patrick Sexton, Assistant General Counsel, CBOE, to Nancy Sanow, Assistant Director, Division, Commission, dated October 4, 2001 (''Amendment No. 2''). In Amendment No. 2, the CBOE clarified in Interpretation .01 and Interpretation .02 to CBOE Rule 5.4 that it will look to the primary market in which the underlying security trades in determining whether the underlying security satisfies the price requirements for adding additional series of option contracts.

[6] The Exchange will use the closing price per share in the primary market in which the underlying security trades for purposes of determining the guideline price. *See* Amendment No. 2, *supra* note 5.

[7] The Exchange will use the closing price per share in the primary market in which the underlying security trades and the price per share of the last reported trade in the primary market in which the underlying security trades at the time the Exchange determines to add the series intra-day. *Id.*

[8] In approving this proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(2).

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[12] that the proposed rule change, as amended, (File No. SR–CBOE–2001–29), is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–27130 Filed 10–26–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44967; File No. SR–CHX–2001–02]

Self-Regulatory Organizations; Chicago Stock Exchange; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to the Processing of Depository Eligible Transactions by Clearing Agencies Exempt From Registration and by Qualified Vendors

October 22, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on January 18, 2001, the Chicago Stock Exchange (''CHX'') filed with the Securities and Exchange Commission (''Commission'') and on August 31, October 10, and October 18, 2001, amended a proposed rule change as described in Items I and II below, which items have been prepared primarily by the CHX. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change.

1. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX is amending its rules governing the entities qualified to process electronic confirmations and affirmations of depository eligible transactions. Specifically, the CHX proposes to amend portions of Article XV, Rule 5 and related published interpretations and policies to provide that no members shall accept an order from a customer pursuant to an arrangement whereby payment for securities purchased or delivery of securities sold is to be made to or by an agent of the customer unless the facilities of a registered clearing agency, a clearing agency that is exempt from registration, or a qualified vendor shall be utilized for the electronic confirmation and affirmation of all depository eligible transactions.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CHX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The CHX is amending portions of Article XV, Rule 5 and related published interpretations and policies pertaining to the types of entities that may process confirmations and affirmations of depository eligible transactions. Under current CHX rules, CHX members may only accept an order from a customer pursuant to an agreement whereby payment for securities purchased or delivery of securities sold is to be made to or by an agent of the customer if that customer or its agent utilizes the facilities of a ''securities depository'' for comparison, acknowledgement, and book entry settlement of depository eligible transactions.[3] CHX rules define a ''securities depository'' as a clearing agency registered with the Commission pursuant to section 17A(b)(2) of the Act.

The Depository Trust Company (''DTC'') is a clearing agency registered with the Commission. DTC has combined its TradeSuite family of institutional trade processing services with the institutional trade processing services offered by Thomson Financial ESG[4] in a proposed joint venture, Omgeo, between The Depository Trust & Clearing Corporation (''DTCC''),[5] Thomson Financial Inc.,[6] and Interavia, A.G. (''Interavia'').[7] Omgeo provides through its wholly owned subsidiary, Global Joint Venture Matching Services-US, LLC (''GJVMS''), post-trade, presettlement related services, including execution notification, allocation, confirmation, central matching service, operational and standing databases (*i.e.,* trade enrichment), and communication facilities among trading parties and their settlement agents.

GJVMS has been granted an exemption from registration as a clearing agency under section 17A of the Exchange Act and thus would not constitute a ''securities depository'' under current CHX rules.[8] Currently, GJVMS is the only U.S. provider of confirmation and affirmation services.

In order to permit CHX members and order sending firms to utilize the services of GJVMS, other exempt clearing agencies, or qualified vendors, several CHX rules must be amended.[9] The CHX believes that use of an exempt entity or qualified vendor would not pose any threat to the integrity of processing depository eligible transactions given the significant technological and other requirements that such an exempt clearing agency or qualified vendor would need to satisfy under the proposed rule.

The CHX believes that the proposed rule is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange and, in particular, with the requirements of section 6(b)(5) in that it is designed to promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The CHX does not believe that the proposed rule change will impose any inappropriate burden on competition.

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by the CHX.

[2] CHX Rules, Article XV, Rule 5.

[4] Thomson Financial ESG is a division of Thomson Financial, a Thomson Corporation subsidiary.

[5] DTCC was created in 1999 as a holding company for DTC and the National Securities Clearing Corporation (''NSCC'').

[6] Thomson Financial Inc. is a wholly owned indirect subsidiary of Thomson Corporation. Thomson Corporation is a global electronic information company.

[7] Interavia is a Swiss corporate affiliate of Thomson Financial Inc.

[8] Securities Exchange Act Release Nos. 44188 (April 17, 2001) [File No. 600–32] (order granting GJVMS an exemption from registration as a clearing agency) and 43540 (November 9, 2000), 65 FR 69582 [File No. 600–32] (notice of filing of application for exemption from clearing agency registration).

[9] ''Qualified vendor'' is defined by Art. XV, Rule 5 to mean a vendor of electronic confirmation and affirmation services that meets a series of specific requirements set forth in the rule.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

After careful consideration, the Commission finds that the proposal is consistent with section 6(b)(5) of the Act.[10] Section 6(b)(5) of the Act requires that the rules of a national securities exchange promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposal is consistent with section 6(b)(5) because it will permit CHX members and order sending firms to utilize the services of GJVMS and other exempt clearing agencies to process depository eligible transactions.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register** because approval prior to the thirtieth day after publication of notice will allow CHX members and order sending firms to be able to use the confirmation and affirmation services of GJVMS. Because GJVMS has received an exemption from registration as a clearing agency, it does not constitute a ''securities depository'' under current CHX rules. Therefore, the CHX rules must be amended to allow CHX members and order sending firms to utilize the services of GJVMS, which is the only U.S. provider of confirmation and affirmation services. In addition, this rule change will make the CHX rule consistent with New York Stock Exchange Rule 387, National Association of Securities Dealers Rule 11860, and Municipal Securities Rulemaking Board Rule G–15.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–2001–02 and should be submitted by November 19, 2001.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[11] that the proposed rule change (File No. SR–CHX–2001–02) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–27129 Filed 10–26–01; 8:45 am]

BILLING CODE 8010–01–M

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44968; File No. SR–NSCC–2001–07]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving a Proposed Rule Change Relating to Buy-In Rules and Procedures

October 22, 2001.

On April 27, 2001, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–NSCC–2001–07) pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] On April 30, 2001, NSCC filed an amendment to the proposed rule change. Notice of the proposal was published in the **Federal Register** on August 29, 2001.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 44736 (August 22, 2001), 66 FR 45715.

I. Description

NSCC is modifying its buy-in rules and procedures to further automate and improve the processing of buy-ins of CNS positions.[3] The revised procedures provide that a Buy-In Notice may be filed by an originator on successive days provided the succeeding Buy-In Notice does not specify a quantity of securities covered by the prior Buy-In Notice and the quantity of securities representing the sum of all Buy-In Notices does not exceed the member's total long position.[4]

The Retransmittal Notice is being revised to include the identity of the originator on the Retransmittal Notice so that the member owing securities can contact the originator to arrange delivery.[5] Regardless of any agreements that may have been entered into between a member owing securities and an originator, unless the originator notifies NSCC in a timely manner that its Buy-In Order should not be executed, members who receive Retransmittal Notices and do not satisfy them assume liability for the loss, if any, which occurs as a result of an originator's Buy-In Order.[6]

The revisions also require members to electronically transmit Buy-In Notices and Buy-In Orders through an automated format determined by NSCC thereby eliminating the practice of hand and facsimile deliveries. Similarly, NSCC will transmit through an automated format Retransmittal Notices to members.[7]

Members will be advised of the specific implementation date of the Buy-In changes prior to implementation.

II. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.[8] The Commission believes that NSCC's rule change is consistent with this section because it will facilitate the prompt and accurate clearance and settlement of buy-in transactions by further automating and improving the processing of buy-ins.

[3] Changes are being made to: NSCC Rule 11, Sections 7(b) and (c); NSCC Procedure VII, section J; and NSCC Procedure X, section A. Also, proposed changes to NSCC Procedure VII, section E3 to conform its language to the language proposed in NSCC Procedure VII, section J.

[4] NSCC Procedure VII, section J.

[5] NSCC Rule 11, section 7(b).

[6] NSCC Procedure X, section A1.

[7] NSCC Rule 11, sections 7(b) and (c).

[8] 15 U.S.C. 78q–1(b)(3)(F).

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of section 17A of the Act and the rules and regulations thereunder.

It is Therefore Ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NSCC–2001–07) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

[FR Doc. 01–27128 Filed 10–26–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44962; File No. SR–NYSE–2001–42]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc., Establishing the Fees for NYSE OpenBook™

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder[2] notice is hereby given that on October 15, 2001, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Exchange proposes to establish a set of fees in its NYSE OpenBook service, a new service in which subscribers may view limit orders contained in the NYSE limit order book.

II. Self Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NYSE OpenBook is a compilation of limit order data that the Exchange will provide to market data vendors, broker-dealers, private network providers, and other entities through a data feed. By enhancing the quality of the Exchange's market data, the Exchange believes that NYSE OpenBook would preserve and increase the benefits that the Exchange offers to its constituents. At the same time, the Exchange believes that the innovation of NYSE OpenBook serves two of the public policy goals of enhancing market transparency and fostering competition among orders and markets.

The Exchange represents that for every limit price, NYSE OpenBook will include the aggregate order volume. The Exchange will make the NYSE OpenBook data feed available through the Exchange's Common Access Point (''CAP'') network. Initially, the Exchange will update NYSE OpenBook every ten seconds.

The Exchange is proposing two fees. First, the Exchange proposes to collect a fee equal to $5,000 per month from each entity that elects to receive the NYSE OpenBook data feed. Second, the Exchange proposes to collect an end-user fee of $50.00[3] per month for each terminal through which the end user is able to display the NYSE OpenBook.

The Exchange believes that NYSE OpenBook responds to the demand of trading desks of broker-dealers and institutional investors for depth-of-market data, a demand that results from decimalization's six-fold increase in the number of price points. Thus, initially, the Exchange anticipates that these trading desks will be the primary users of NYSE OpenBook. As the Exchange gains experience with NYSE OpenBook, the Exchange notes that it may design a data product that is more suitable for use by registered representatives. Eventually, if a demand develops, the Exchange would consider designing a limit order data product suited for the retail, nonprofessional customer.

The Exchange represents that it will require each NYSE OpenBook data feed recipient to enter into the existing form of ''vendor'' agreement. That agreement will authorize the data feed recipient to provide NYSE OpenBook display services to its customers or to distribute the data internally. In addition, the Exchange represents that it will require each end-user that receives NYSE OpenBook displays from a vendor or broker-dealer to execute the existing NYSE ''subscriber'' agreement for that purpose.

The Exchange, acting for the Consolidated Tape Association (''CTA'') and Consolidated Quotation (''CQ'') Plan Participants, currently uses the vendor and subscriber agreements to make available equity quotes and prices. In addition, the Exchange, acting on its own behalf, uses the vendor and subscriber agreements to make available bond quotes and prices. Since the agreements are generic, the Exchange believes that the agreements would accommodate NYSE OpenBook. When the CTA and CQ Plan Participants adopted the current vendor forms of agreement, the Commission published the forms for public comment and approved them.[4]

The Exchange intends to supplement the vendor and subscriber agreements with additional terms that are unique to NYSE OpenBook. The first additional term to the vendor and subscriber agreements that the Exchange would provide requires a data-feed recipient that redisseminates NYSE OpenBook outside of its organization may not integrate the limit orders of other markets or trading systems into the NYSE limit orders (*i.e.*, the data-feed recipient must display the NYSE's compilation in a separate ''window''[5] marked ''NYSE OpenBook™''). The Exchange notes that the window requirement is designed to maintain the

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange notes that although no other market participant currently offers a limit order data compilation, a few markets offer services that provide a point of reference. According to the Exchange, the NASDAQ Stock Market charges $50 per terminal for its Nasdaq Level II service, which provides the best bid and offer from all market makers and ECNs (although it does not otherwise provide depth-of-book or depth-of-market information). The Exchange also believes that the London Stock Exchange charges $144–$219 per terminal for the price and size of limit orders in stocks that are included in the FTSE 250 index. Further, the Exchange believes that the Toronto Stock Exchange charges $30 per terminal for its order books.

[4] *See* Securities Exchange Act Rel Nos. 22851 (January 31, 1986), 51 FR 5135 (February 11, 1986); 28407 (September 6, 1990), 55 FR 37276 (September 10, 1990).

[5] The Exchange notes that it is referring to a ''window'' for conceptual clarity. The requirement does not literally require a separate window, only separate displays. In other words, a vendor could format multiple displays in a single window.

integrity of the NYSE's data compilation so that it is uniquely identified to the NYSE. A vendor could place other markets' limit order displays on the same page as the NYSE OpenBook window.

Further, the Exchange represents that the window requirement applies solely to vendors and not to trading desks that may display NYSE OpenBook for its own use. Because of the window requirement's limited reach, the Exchange notes that mere receipt of the data feed does not in itself convert a broker-dealer into a vendor. According to the Exchange, if a broker-dealer redistributes data to its customers, the broker-dealer would be subject to the window requirement like any other vendor. The Exchange believes that the dichotomy follows conventional licensing distinctions that treat vending and rebroadcasting differently from internal consumption. According to the Exchange, these distinctions are based in part on the practical difficulties inherent in policing internal consumption.

In addition, the Exchange believes that the dichotomy tracks current practices among market data vendors. According to the Exchange, vendors typically control the formats of their display services, but do not control the formats of their data feed services. The Exchange believes that this vendor practice follows a common business stratification approach of providing branded products to one market segment, and licensing customized offerings to another market segment.

The second additional term to the vendor and subscriber agreements that the Exchange would provide initially precludes data-feed customers from retransmitting the NYSE OpenBook data feed. The Exchange believes that this is a prudent safeguard in introducing the new product into the marketplace, particularly since NYSE OpenBook may be the subject of several releases in its first year. Furthermore, the Exchange notes that precluding retransmission of the NYSE OpenBook data feed reflects the Exchange's negative experience with retransmission of the CTA and CQ high speed lines. In recent years, some new entrants into the data-feed business have failed to adopt the administrative controls necessary to assure that their data-feed customers are entitled to receive indirect access to the CTA and CQ high speed lines. The Exchange represents that once the NYSE and the marketplace gain experience with the product, the Exchange will permit retransmission of the NYSE OpenBook data feed.

2. Statutory Basis

The Exchange believes that the basis under the act for the proposed rule change are the requirements under section 6(b)(4) of the Act,[6] which provides that an exchange have rules that provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities; and the requirements under section 6(b)(5) of the Act,[7] which provides, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade and not to permit unfair discrimination between customers, issuers, brokers or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed fee change will not impose any burden on competition that is not necessary or appropriate in the furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

A. Description of Proposed Restrictions on NYSE OpenBook

As described above, the NYSE proposes to provide a new service that will permit subscribers to view limit orders contained in the NYSE limit order book. The NYSE envisions two main categories of subscribers to this information: (1) broker-dealers and institutions; and (2) traditional market data vendors that disseminate information to market participants, including broker-dealers, institutions, and other customers. The NYSE's proposed restrictions on re-dissemination of OpenBook data would appear to affect these two types of subscribers differently. While a broker-dealer or institution would be prohibited from enhancing, integrating, or consolidating the OpenBook data with other markets' data for re-dissemination outside of the firm, it could enhance, integrate, or consolidate OpenBook data for its internal use, including distribution to specific trading desks and branch offices within the firm. In this way, a broker-dealer or institution would have the flexibility to fine-tune its OpenBook data feed in a manner that would maximize its usefulness for its trading operations. On the other hand, vendors would be unable to disseminate the data to their customers in a form other than the form prescribed by the NYSE (*i.e.*, they must display the information in a separate window marked NYSE Open Book). Moreover, the Exchange represents that all recipients of the data-feed, including broker-dealers, vendors, institutions, and others, would initially be precluded from retransmitting the OpenBook data-feed in any form. The NYSE represents that ''this is a prudent safeguard in introducing the new product into the marketplace, particularly since NYSE OpenBook may be the subject of several releases in its first year. Furthermore, the Exchange notes that precluding retransmission of the NYSE OpenBook data feed reflects the Exchange's negative experience with retransmission of the CTA and CQ high speed lines.''

The Commission recognizes that the NYSE's OpenBook proposal would provide market participants with potentially valuable information about the limit orders on specialists' books. This service may be particularly useful in the current decimal pricing environment by providing more information concerning buy or sell interest at various price levels outside of the current inside quotations posted by the Exchange. Nevertheless, the NYSE's proposed restrictions on OpenBook data may potentially raise issues concerning unfair discrimination against different types of subscribers. Moreover, the NYSE's proposed restrictions on consolidating OpenBook information with limit order information available from other market centers may raise questions concerning the fairness and usefulness of the form and content of such information.

B. Statutory Standards

Section 11A generally sets forth the standards under which an SRO may

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78f(b)(5).

distribute *information with respect to* quotations, including limit orders.[8]

1. Section 11A(c)(1) (D) and (C)

Section 11A(c)(1)(D) of the Act[9] requires, among other things, that exchange members, brokers, dealers, and securities information processors be able to obtain information with respect to quotations for and transactions in securities on terms that are not unreasonably discriminatory. The Commission requests comment on whether the NYSE's proposal is consistent with this provision. Commenters are requested to address whether the restrictions on vendor re-dissemination of the data, including the prohibition on providing the full data feed and providing enhanced, integrated, or consolidated data, are unfairly discriminatory. Commenters are also asked to identify any other aspect of the proposal that may be unfairly discriminatory.

The Commission also requests comment on whether the proposal is consistent with the requirements of section 11A(c)(1)(C) of the Act,[10] which requires among other things, that all securities information processors be able to obtain information with respect to quotations and transactions for purposes of distribution and publication on fair and reasonable terms. Specifically, are the contract terms that restrict the use and redissemination of the OpenBook fair and reasonable?

2. Section 11A(c)(1)(B)

Section 11A(c)(1)(B) of the Act[11] requires, among other things, that a SRO distribute information with respect to quotations in such a manner as to assure the prompt, accurate, reliable, and fair collection, processing, distribution, and publication of information with respect to quotations for and transactions in such securities, and the fairness and usefulness of he form and content of such information. In this regard, the Commission requests commenters' views on whether the form and content of the OpenBook data are useful and fair in light of the restrictions on the form of display (*i.e.,* the Exchange requirement that a subscriber that redisseminates the data must display it in a separate window marked NYSE Open Book).

3. Other Issues

Finally, the Commission requests comment on the proposal's potential impact on competition. Specifically, the Commission requests comment on whether the proposal imposes any burden on competition that is not necessary or appropriate.[12] In this regard, the Commission requests commenters' views on whether the prohibition on redisseminating OpenBook in an enhanced, integrated, or consolidated form prevents vendors from competing with the NYSE.

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–2001–42 and should be submitted by November 19, 2001.

For the Commission, by the Division of Market Regulation, pursuant to the delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–27131 Filed 10–26–01; 8:45 am]

BILLING CODE 8010–01–M

[8] In 1975, Congress gave the Commission authority under section 11A to regulate information with respect to quotations, including limit orders. *See* S. Rep. 94–75 94th Cong., 1st Sess. 93 at 8 (1975) (stating in relevant part, ''[t]here are two paramount objectives in the development of a national market system. * * * And second, the centralization of *all* buying and selling interest so that each investor will have the opportunity for the best possible execution of his order regardless of where in the system it originates.'') (Emphasis added); *Id.* at 9 (stating in relevant part, ''[the] regulation of securities communication systems would be accomplished under S. 249 by adding a new section 11A to the Exchange Act. This section is intended to bring under the SEC's direct jurisdiction all organizations engaged in the business of collecting, processing, or publishing information relating to quotations for, indications of interest to purchase and sell, and transactions in securities.'') In 1996, the Commission adopted the customer limit order display rule to further the principles of a national market system. *See* Securities Exchange Act Release No. 37619A (August 29, 1996), 61 FR 48290, 48297 (September 12, 1996) (noting that ''[t]he Commission has consistently recognized since 1975 that, in order to satisfy this Congressional vision, multiple-market display of limit orders was an important component for qualified securities.'')

[9] 15 U.S.C. 78k–1(c)(D).

[10] 15 U.S.C. 78k–1(c)(1)(C).

[11] 15 U.S.C. 78k–1(c)(1)(B).

[12] *See, e.g.,* sections 6(b)(8) and (5) of the Act. 15 U.S.C. 78f(b)(8) and (5).

[13] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

President's Commission To Strengthen Social Security

AGENCY: Social Security Administration (SSA).

ACTION: Announcement of meeting location.

DATES: November 9, 2001, 10 a.m.–3:30 p.m.

ADDRESSES: Park Hyatt Ballroom, Park Hyatt Washington, 24th at M Street NW., Washington, DC 20037, (202) 789–1234.

SUPPLEMENTARY INFORMATION: The October 23, 2001 **Federal Register** notice (Volume 66, Number 205, Pages 53650–53651) announcing the November 9 meeting of the President's Commission to Strengthen Social Security did not include a meeting location. The purpose of this announcement is to provide the meeting location.

The Commission will meet commencing Friday, November 9, at 10 a.m. and ending at 3:30 p.m., with a break for lunch between 1 p.m. and 2 p.m. The Commission will be deliberating on Social Security reform options, including how to administer personal accounts.

Dated: October 23, 2001.

Michael A. Anzick,

Designated Federal Officer.

[FR Doc. 01–27224 Filed 10–26–01; 8:45 am]

BILLING CODE 4191–02–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities Under OMB Review

AGENCY: Federal Aviation Administrtion (FAA), DOT.

ACTION: Note.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requests (ICR) abstracted below have been forwarded to the Office

of Management and Budget (OMB) for extension of the currently approved collections. The ICR describes the nature of the information collections and the expected burdens. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on April 26, 2001, pages 2017–2138.

DATES: Comments must be submitted on or before November 29, 2001. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Send comments to the Office of Information and Regulatory affairs, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503, Attention FAA Desk Officer.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

1. Title: Safety Improvement Report, Accident Prevention Counselor Activity Reports.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0057.

Forms(s) FAA Forms 89740–5 and 8740–6.

Affected Public: 4,792 Individuals and Businesses.

Abstract: Airmen use Safety Improvement Reports to notify the FAA of Hazards to flight operations. Counselors use Accident Prevention Counselor Activity Reports to advise the FAA of accomplishments of the accident prevention program. The affected public includes pilots, airport operators, and charter and commuter aircraft operators engaging in air transportation.

Estimated Annual Burden Hours: 1,769 hours annually.

2. *Title:* Implementation of the Equal Access to Justice Act.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0539.

Forms(s) NA.

Affected Public: Estimated 15 applicant petitioning for an award of attorney's fees and other expenses under the Equal Access to Justice Act (EAJA).

Abstract: The information will be used to determine whether the applicant is eligible to receive an award under the EAJA.

Estimated Annual Burden Hours: An estimated 600 hours annually.

3. *Title:* Office of Dispute Resolution Procedures for Protests and Contract Disputes, 14 CFR part 17.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0632.

Forms(s) NA.

Affected Public: A combined estimated 40 respondents (businesses, individuals, not-for-profit institutions, and state and local governments).

Abstract: These are procedural requirements for the conduct of protests and contract disputes before the Office of Dispute Resolution for Acquisition. 14 CFR 17.15 and 17.25 provide the procedures for filing protests and contract claims with the ODRA. The regulations seek factual and legal information from protesters or claimants.

Estimated Annual Burden Hours: An estimated 820 hours annually.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection ways to enhance the quality, utility and clarity of the information be be collected; and ways to minimize the burden of the collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Dated: Issued Washington, DC, on October 16, 2001.

Steve Hopkins,

Manager, Standards and Information Division, APF–100.

[FR Doc. 01–27164 Filed 10–26–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2001–86]

Petitions for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before November 8, 2001.

ADDRESSES: Send comments on any petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2000–XXXX at the beginning of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov.* You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Forest Rawls (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, or Vanessa Wilkins (202) 267–8029, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC on: October 24, 2001.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2001–10191.

Petitioner: Department of the Air Force.

Section of 14 CFR Affected: 14 CFR 91.209(a)(1) and (b).

Description of Relief Sought: To permit the United States Air Force to conduct night-vision goggle lights-out training in the Alaskan military operating areas (MOA's), and selected MOA's

within the lower 48 contiguous United States and Puerto Rico.

[FR Doc. 01–27161 Filed 10–26–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2001–87]

Petitions for Exemption; Summary of Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Dispositions of prior petitions and a correction.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of dispositions of certain petitions previously received and a correction. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

FOR FURTHER INFORMATION CONTACT: Forest Rawls (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, or Vanessa Wilkins (202) 267–8029, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on October 24, 2001.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: FAA–2000–8190.
Petitioner: Atlas Air, Inc.
Section of 14 CFR Affected: 14 CFR 121.434(c)(1)(ii).
Description of Relief Sought/ Disposition: To permit Atlas to substitute a qualified and authorized check airman in place of an FAA inspector to observe a qualifying pilot in command who is completing initial or upgrade training specified in § 121.424 during at least on flight leg that includes a takeoff and a landing. *Grant, 10/16/2001, Exemption No. 7641*

Docket No.: 26826.
Petitioner: AAR Corp.
Section of 14 CFR Affected: 14 CFR 21.327(e)(4).
Description of Relief Sought/ Disposition: To permit AAR to export repaired products using FAA Form 8130–3, Airworthiness Approval Tag, without obtaining a written statement from the importing country listing the conditions under § 21.331(a)(1) that have been met. *Denial, 10/02/2001, Exemption No. 7632*

Docket No.: FAA–2001–10070.
Petitioner: Aerolineas Centrales de Colombia, S.A.
Section of 14 CFR Affected: 14 CFR 121.344(e).
Description of Relief Sought/ Disposition: To permit ACES to operate two Avions de Transport Regional ATR 42–500 airplanes without an approved digital flight data recorder installed. *Denial, 10/16/2001, Exemption No. 7644*

Correction

Docket No.: FAA–2001–10045.
Petitioner: Mountain Air Cargo, Inc.
Section of 14 CFR Affected: 14 CFR 91.203(a) and (b), 121.153(a)(1), and 135.25(a)(1).
Description of Relief Sought/ Disposition: To permit MAC to temporarily operate U.S.-registered aircraft in domestic airline operations under part 121 or part 135 without the airworthiness or registration certificate onboard. *Grant, 09/10/2001, Exemption No. 7620*

[FR Doc. 01–27162 Filed 10–26–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2001–88]

Petitions for Exemption; Summary of Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of dispositions of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

FOR FURTHER INFORMATION CONTACT: Forest Rawls (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, or Vanessa Wilkins (202) 267–8029, Office of Rulemaking (ARM–1) Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on October 24, 2001.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: FAA–2001–10841.
Petitioner: Great Rivers Pilots Association.
Section of 14 CFR Affected: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J to part 121.
Description of Relief Sought/ Disposition: To permit GRPA to conduct local sightseeing flights at Pittsfield Penstone Municipal Airport for the Pike County Color Drive Fly In during October 2001, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135. *Grant, 10/17/2001, Exemption No. 7646*

Docket No.: FAA–2001–10850.
Petitioner: Western North Carolina Pilots Association, Inc.
Section of 14 CFR Affected: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J to part 121.
Description of Relief Sought/ Disposition: To permit WNCPA to conduct local sightseeing flights at Asheville Regional Airport for Fall Color Scenic Rides during October 2001, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135. *Grant, 10/17/2001, Exemption No. 7645*

Docket No.: FAA–2001–10357.
Petitioner: Executive Aviation Logistics, Inc.
Section of 14 CFR Affected: 14 CFR 135.152.
Description of Relief Sought/ Disposition: To permit EAL to operate its 1975 Gulfstream American Gulfstream II airplane (serial No. 173) under part 135 without the airplane being equipped with an approved digital flight data recorder. *Grant, 10/16/2001, Exemption No. 7643*

Docket No.: FAA–2001–9787.
Petitioner: Alpine Aviation, Inc., dba Alpine Air.

Section of 14 CFR Affected: 14 CFR 61.51(f).

Description of Relief Sought/ Disposition: To permit Alpine Air pilots to log second-in command flight time for cargo flights under instrument flight rules in certain multiengine aircraft when more than one pilot is not required by either the aircraft type certificate or the regulations under which the flight is conducted. *Denial, 10/16/2001, Exemption No. 7642*

Docket No.: FAA–2001–10761.

Petitioner: Mr. Mark Fryburg.

Section of 14 CFR Affected: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J to part 121.

Description of Relief Sought/ Disposition: To permit Mr. Fryburg to conduct local sightseeing flights in the vicinity of Portland, Oregon, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135. The flights will be auctioned on October 27, 2001, to benefit the Unitarian-Universalist Community Church of Washington County. The flights are expected to occur between October 28, 2001, and December 31, 2001. *Grant, 10/17/2001, Exemption No. 7647*

[FR Doc. 01–27163 Filed 10–26–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Modification of Single Car Air Brake Test Procedures

In accordance with part 232 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for modification of the single car air brake test procedures as prescribed in 232.305(a).

The Association of American Railroads

[Docket Number FRA–2001–10819]

Pursuant to 49 CFR 232.307, the Association of American Railroads (AAR) seeks modification of the single car air brake test procedures, S–486, as prescribed in § 232.305(a) of the Brake System Safety Standards for Freight and Other Non-Passenger Trains and Equipment.

The sections, paragraphs and parts of S–486, that AAR request to be modified are as follows:

3.1.2.9—original If the car is equipped with an empty/load device, the device must be set to the LOADED position.

(Modification—3.1.2.9) If the car is equipped with an empty/load device, the device must be set to the LOADED position. For side frame sensing devices, place a block (2 inch minimum thickness) under the sensing arm. For slope sheet sensing devices, insert a pin (supplied by Ellcon-National for their empty/load device) or push in a plunger (WABTEC).

The following Note is being added to Section 3.5 System Leakage Test:

(Modification)—

Note: The hand brake Inspection (3.6) can be made while the car brake system is being charged or during the System Leakage Test (3.5)

3.5.2—original If any part of the ball is above the condemning line, it indicates that the brake system is not charged or that excessive leakage exists. Open the flowrator by-pass cock and make a complete check for leakage of all pipe connections, reservoir separation plate gasket, control valve covers and exhausts, service and emergency portion to pipe bracket gaskets, quick service exhaust valves, and vent valve exhausts. Correct any leakage found and repeat the system leakage test.

(Modification—3.5.2) If any part of the ball is above the condemning line, it indicates that the brake system is not charged or that excessive leakage exists. Open the flowrator by-pass cock and make a complete check for leakage. Check all pipe connections, reservoir separation plate gasket, control valve covers, and service and emergency portion mounting gaskets. Correct any leakage found and repeat the system leakage test. If excessive leakage still exists, check all control valve cover gaskets, quick service, manual release valve and vent valve exhausts. Correct any excessive leakage found and repeat the system leakage test.

3.6.1—original Lubricate the hand brake winding shaft and oil cups, if so equipped, with a good grade of 30W oil. With the hand brake in released position, note that the brake cylinder piston push rod(s) have returned into the brake cylinder(s). Apply the hand brake. Observe that the bell crank is in normal working range. Using a bar, determine that all shoes applied by the hand brake are firmly set against the wheels to verify that associated linkage does not bind or foul. On cars with WABCOPAC/NYCOPAC type truck mounted brakes and a hand brake that operates the brake beams on both trucks, a minimum of one shoe on each beam must be firmly set against the wheel to verify that associated linkage does not bind or foul. Release hand brake using operating wheel and/or lever. Note that drum chain is fully unwound, that bell crank, if so equipped, drops to lower limit, and that there is minimal slack in the horizontal chain.

(Modification—3.6.1) Lubricate the hand brake winding shaft and oil cups, if so equipped, with a good grade of 30W oil. With the hand brake in released position, note that the brake cylinder piston push rod(s) have returned into the brake cylinder(s). Apply the hand brake. Observe that bell crank, if so equipped, is in normal working range. Using a bar, determine that all shoes applied by the hand brake are firmly set against the wheels to verify that associated linkage does not bind or foul. On cars with WABCOPAC/NYCOPAC type truck mounted brakes and a hand brake that operates the brake beams on one or both trucks, a minimum of one shoe on each beam must be firmly set against the wheel to verify that associated linkage does not bind or foul. Release hand brake using operating wheel and/or lever. Note that drum chain is fully unwound, that bell crank, if so equipped, drops to lower limit, and that there is minimal slack in the horizontal chain.

Original—3.8.1 Measure and note brake cylinder piston travel and check all brake levers for angularity. Piston travel on standard (single capacity) 12-inch stroke body mounted brake cylinders is 7 to 9 inches. Other than standard, cars must be adjusted per badge plate or stenciling on car.

(Modification—3.8.1) Measure and note brake cylinder piston travel and check all brake levers for angularity. If piston travel is outside of the nominal range in Rule 3, piston travel must be adjusted to the initial set up dimension.

Original—3.8.2 On cars with direct acting truck mounted brakes without slack adjusters, observe that the piston travel does not exceed 3 inches (without brake shoe renewal). If piston travel exceeds 3 inches, adjustment in accordance with Instruction Pamphlet 2391 Sup.1, Paragraph 1.3.3 is required.

(Modification—The contents of this paragraph are deleted.)

Original—3.8.3 Check the entire rigging system for any binding or fouling.

(**Modification—**The contents of this paragraph will become the new 3.8.2. There will not be a 3.8.3.)

Original—3.9.1 On cars with less than 100 feet of brake pipe, reduce the brake pipe pressure 50 psi in Position 4 or 5, and then move the device handle to Position 3. (This must not produce an emergency application.) With the brake pipe pressure no lower than 40 psi,

quickly open the test device ⅜-inch cock. This test must produce a control valve emergency application as indicated by the rapid venting of the brake pipe pressure to zero. The brake cylinder pressure must be higher than the final full service pressure noted in Paragraph 3.7.7. If the brake cylinder pressure is not higher, first soap the gauge and pressure tap before replacing any brake components. No leakage is allowed. If leakage exists at the gauge connection, release the brake, repair or replace tap or gauge and repeat this test. If emergency brake cylinder pressure still does not increase over the full service pressure, the most likely cause is a defective emergency portion, which must be replaced.

(**Modification—3.9.1)** Reduce the brake pipe pressure to 50 psi in Position 4 or 5, and then move the device handle to Position 3. (This must not produce an emergency application.) With the brake pipe pressure no lower than 40 psi, quickly open the test device ⅜-inch cock. On cars with brake pipe length of over 100 feet, place the device in position 4 and quickly open the test device ⅜ inch cock. This test must produce a control valve emergency application as indicated by the rapid venting of the brake pipe pressure to zero. The brake cylinder pressure must be higher than the final full service pressure noted in Paragraph 3.7.7. If the brake cylinder pressure is not higher, first soap the gauge and pressure tap before replacing any brake components. No leakage is allowed. If leakage exists at the gauge connection, release the brake, repair or replace tap or gauge and repeat this test. If emergency brake cylinder pressure still does not increase over the full service pressure, the most likely cause is a defective emergency portion, which must be replaced.

Original—3.12.3.1 Flowrator Method

(**Modification—title change)** Brake Cylinder Leakage Test—Flowrator Method

Original-3.12.3.2 Brake Cylinder Gauge Method

(**Modification—title change)** Brake Cylinder Leakage Test—Gauge Method

Original—3.15.3 If the brake cylinder gauge was installed in 3.1.2.6, MAKE CERTAIN THAT GAUGE IS REMOVED AT THIS TIME. Soap male brake cylinder pressure tap. No leakage allowed. If leakage is present, release brake and replace the brake cylinder pressure tap per section 4.4.

Original—3.15.4If the slack adjuster is found to be defective, make necessary repairs and/or replace the slack adjuster and test the slack adjuster according to Paragraph 4.1.

(**Modification—**The contents of 3.15.3 have been eliminated. 3.15.4 has been reworded and is now found in 3.15.3. There will no longer be a 3.15.4. **3.15.3)** If slack adjuster is found to be defective, continue with the single car test. After the single car test is completed, make necessary repairs and/or replace the slack adjuster and test the slack adjuster according to Paragraph 4.1.

(**Modification—**A new paragraph is added. **3.16.2.1)** Make certain that any block(s) that were installed between brake shoe(s) and wheel(s) in section 3.13.6 are removed at this time. If a pin was inserted into a slope sheet empty/load sensor, make certain that the pin is removed.

Original—3.16.3 Move device handle to Position 1. Note that the brake cylinder piston remains in the release position during charging.

Original—3.16.4 When the brake pipe pressure has reached a minimum of 80 psi, move the device handle to Position 5. Allow brake pipe pressure to decrease to zero psi. Note that the brakes apply thereby indicating that the brake cylinder release feature has reset.

(**Modification—**3.16.3 and 3.16.4 has been changed, renumbered, with additional paragraphs as follows:)

(**Modification—3.16.3)** Completing test on a Loaded Car or on a Car not equipped with a brake cylinder test gauge

(**Modification—3.16.3.1)** Move device handle to Position 1. Note the brake cylinder piston remains in the release position during charging.

(**Modification—3.16.3.2)** When the brake pipe pressure has reached a minimum of 80 psi, move the device handle to Position 5. Allow the brake pipe pressure to decrease to zero psi. Note that the brakes apply thereby indicating that the brake cylinder release feature has reset. Go to section 3.16.5

(**Modification—3.16.4)** Completing Test on an empty car equipped with empty/load and a brake cylinder test gauge.

Note: If car has defective slack adjuster, change slack adjuster and test according to Sect 4.1, and then continue test with section 3.16.4.1.

(**Modification—3.16.4.1)** Place the device handle in Position 1 and recharge the car until the flowrator ball floats below the top of the tube. Note that the brake cylinder piston remains in the release position during charging.

(**Modification—3.16.4.2)** Place the handle in Position 5 and allow the brake pipe pressure to decrease to zero psi. Note that the brakes apply thereby indicating that the cylinder release feature has reset. The brake cylinder pressure must be at least 20 psi lower than the final full service pressure noted in Paragraph 3.7.7. Probable cause for failure of the empty/load equipment, if the equipment has a separate sensing device, is in the adjustment of the sensor device or the sensor device itself, and the next likely cause is the empty/load valve itself.

(**Modification—3.16.5)** If brake cylinder gauge was installed in 3.1.2.6, MAKE CERTAIN THAT GAUGE IS REMOVED AT THIS TIME. Soap male brake cylinder pressure tap. No leakage is allowed. If leakage is present, drain brake cylinder, release brake and replace the brake cylinder pressure tap per section 4.4.

(**Mod—3.16.6)** If the empty/load was tested, soap the empty/load device, the equalizing reservoir and associated piping. If leakage is present, drain brake cylinder, release and replace the defective empty/load equipment and test per section 4.6.

Original—3.17.2 If empty/load device on an empty car was set to loaded position, return to empty position.

Original—3.17.3 To prevent possible overcharge problems, drain car reservoirs.

Original—3.17.4 Shut off air supply to test device, or place device handle in Position 3.

Original—3.17. Open ⅜-inch cock, and disconnect test device. Remove the dummy coupling

Original—3.17.6 Make certain that any block(s) that were installed or brake shoe(s) that were removed in section 3.13.6 are removed or replaced.

Original—3.17.7 If required, secure the car to prevent movement.

(**Modification**—3.17.2 through 3.17.7 has been changed as follows:)

(**Modification—3.17.2)** To prevent possible overcharge problems, drain car reservoirs. If empty/load device on an empty car was set to loaded position and was not set to empty position in section 3.16.2, return setting to empty position.

(**Modification—3.17.3)** Shut off air supply to test device, or place device handle in Position 3.

(**Modification—3.17.4**) Open ⅜-inch cock, and disconnect test device. Remove dummy coupling.

(**Modification—3.17.5**) If required, secure the car to prevent movement.

original—4.1.20 Measure piston travel. Piston travel should be nominally 7½ inches or as described on badge plate.

(**Modification—4.1.2**) Measure piston travel. Piston travel should be nominally 7½ inches or as described in Rule 3.

Original—4.1.4 Install block(s) between brake shoe and wheel or remove brake shoe(s) at one end of car. Cars with multiple slack adjusters must have blocks installed at each slack adjuster location.

(**Modification—4.1.4**) Install block(s) between brake shoe and wheel at one end of car. Cars with multiple slack adjusters must have blocks installed at each slack adjuster location.

Original—4.1.8 Place device handle in Position 1 and completely recharge car. Remove block(s) or reinstall brake shoe(s).

(**Modification—4.1.8**) Place device handle in Position 1 and completely recharge car. Remove block(s) between shoe(s) and wheel(s).

Original—4.4.3 Complete air brake test as described in 3.17.

(**Modification—4.4.3**) If empty/load device on an empty car was set to loaded position, return to empty position. Complete air test as described in 3.17.

(**Modification**—The following paragraphs have been added:)

(**Modification—4.5**) Brake Cylinder Leakage Test Using Gauge.

Note: If the car is equipped with an empty/load device, the car must be set to the LOADED position. If the car is equipped with a brake cylinder pressure tap, install a brake cylinder pressure gauge. If the car does not have a tap, go to section 4.2, Retaining Valve Test.

(**Modification—4.5.1**) With the control valve cut in, move test device handle to Position 1 and fully charge the system to 90 psi. Move the reducing valve handle to the low-pressure position while leaving device handle in Position 1. Brake pipe pressure will continue to drop to 80 psi. After the brake pipe pressure has stabilized at 80 psi, wait 3 minutes, then note pressure on brake cylinder gauge. Wait another one minute, then recheck brake cylinder gauge. No more than 1 psi increase or decrease in brake cylinder pressure is allowed. If brake cylinder pressure decreases, probable cause is a leak in the brake cylinder or its associated piping. If brake cylinder pressure increases, probable cause is either a defective service portion or a defective emergency portion, finish test as described in Paragraph 3.17.

Note: To determine which portion may be defective, move the device handle to position 5 and increase the brake application to a 30 psi reduction, then return the device handle to position 3. After the brake pipe pressure has stabilized, wait 2 minutes, then note brake cylinder gauge. Wait another one minute, then check brake cylinder gauge. If the brake cylinder pressure has increased, the emergency portion is defective, or an internal leak exists in the reservoir separation plate between the auxiliary and emergency reservoirs. If the brake cylinder pressure did not increase, then the service portion is defective.

(**MODIFICATION—4.6**) Empty/Load Test.

Note: When empty/load equipment is installed on a car, the equipment must be installed and adjusted according to OEM instructions. The following test is to be used after empty/load equipment has been replaced.

(**MODIFICATION—4.6.1**) Install brake cylinder pressure tap on car unless the car is already so equipped. Install brake cylinder pressure gauge. Begin test with car fully charged and device handle in Position 1. Make sure the empty/load equipment is set for LOADED position.

(**MODIFICATION—4.6.2**) Move the reducing valve handle to the low-pressure position while leaving device handle in Position 1. Brake pipe pressure will continue to drop to 80 psi. After the brake pipe pressure has stabilized at 80 psi, wait 3 minutes, then note pressure on brake cylinder gauge. Wait another one minute, then recheck brake cylinder gauge. No more than a 1 psi increase or decrease in brake cylinder is allowed. If brake cylinder pressure decreases, probable cause is a leak in the brake cylinder or its associated piping. Correct leakage and continue test. If brake cylinder pressure increases, probable cause is either a defective service portion or a defective emergency portion. Replace service and/or emergency portion and make a complete single car test.

Note: To determine which portion may be defective, move the device handle to Position 5 and increase the brake application to a 30 psi reduction , then return the handle to Position 3. After the brake pipe pressure has stabilized, wait 2 minutes, then note brake cylinder gauge. Wait another one minute, then recheck brake cylinder gauge. If brake cylinder pressure has increased, the emergency portion is defective, or an internal leak exists in the reservoir separation plate between the auxiliary and emergency reservoirs. If the brake cylinder pressure did not increase, then the service portion is defective.

(**MODIFICATION—4.6.3**) Place the reducing valve handle to the high-pressure position and recharge the car until the flowrator ball floats below the top of the tube. Apply the brakes with a 30 psi reduction with device handle in Position 5. Record the brake cylinder pressure.

(**MODIFICATION—4.6.4**) Place the device handle to Position 1 and recharge the car until the flowrator ball floats below the top of the tube. Set the empty/load equipment to EMPTY position.

(**MODIFICATION—4.6.5**) Place device handle in Position 5 and allow the brake pipe pressure to decrease to zero psi. The brake cylinder pressure must be at least 20 psi lower than the final full service pressure noted in Paragraph 4.6.3. Probable cause for failure to the empty/load equipment, if the equipment has a separate sensing device, is in the adjustment of the sensor device or the sensor device itself, and the next most likely cause is the empty/load valve itself. Finish test as described in Paragraph 3.17.

Interested parties are invited to submit written views, data, or comments. All communications concerning these proceedings should identify the appropriate docket number (e.g., Docket Number FRA–2001–10819) and must be submitted in triplicate to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 Seventh Street SW., Washington, DC 20590–0001. Comments received within *60 days* of the date of this notice will be considered by FRA before final action is taken. Pursuant to § 232.307(d), if no comment objecting to the requested modification is received during the 60-day comment period or if FRA does not issue a written objection to the requested modification, the modification will become effective 15 days after the close of the 60-day comment period. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.—5:00 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's web site at *http://dms.dot.gov.*

Issued in Washington, DC on October 23, 2001.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 01–27140 Filed 10–26–01; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief from Requirements

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. 20502(a), the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval

for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Docket Number FRA–2001–10658

Applicant: CSX Transportation, Incorporated, Mr. Eric G. Peterson, Assistant Chief Engineer, Signal Design and Construction, 4901 Belfort Road, Suite 130 (S/C J–370), Jacksonville, Florida 32256.

CSX Transportation, Incorporated seeks approval of the proposed modification of the traffic control system, on the Number 1 Main Track and Side Track, at Gauley, West Virginia, milepost CA–415.50 on the New River Subdivision, C&O Division, consisting of the discontinuance and removal of the controlled electric locks from the hand-operated switch and derail at the location, while retaining the derail and dwarf signal.

The reason given for the proposed changes is to eliminate facilities no longer needed in present day operation.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.—5:00 p.m.) at DOT Central Docket Management Facility, Room PI–401 (Plaza Level), 400 Seventh Street, SW., Washington, DC 20590–0001. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov.*

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on October 23, 2001.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 01–27138 Filed 10–26–01; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief from Requirements

Pursuant to Title 49 Code of Federal Regulations (CFR) Part 235 and 49 U.S.C. 20502(a), the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR Part 236 as detailed below.

Docket Number FRA–2001–10659

Applicant: CSX Transportation, Incorporated, Mr. Eric G. Peterson, Assistant Chief Engineer, Signal Design and Construction, 4901 Belfort Road, Suite 130 (S/C J–370), Jacksonville, Florida 32256.

CSX Transportation, Incorporated seeks approval of the proposed modification of the traffic control system, on the single main track, at N.E. Minturn, milepost SH–282.2 and S.E. Minturn, milepost SH–283.2, South Carolina, on the Andrews Subdivision, Florence Service Lane, consisting of the discontinuance and removal of controlled absolute signals H2821 and H2822 at N.E. Minturn, and controlled absolute signals H2831 and H2832 at S.E. Minturn

The reason given for the proposed changes is to eliminate facilities no longer needed in present day operation.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.—5:00 p.m.) at DOT Central Docket Management Facility, Room PI–401 (Plaza Level), 400 Seventh Street, S.W., Washington, DC 20590–0001. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov.*

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on October 23, 2001.

Grady C. Cothen, Jr.

Deputy Associate Administrator for Safety Standards and, Program Development.

[FR Doc. 01–27141 Filed 10–26–01; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From Requirements

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. 20502(a), the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Docket Number FRA–2001–10657

Applicant: CSX Transportation, Incorporated, Mr. Eric G. Peterson, Assistant Chief Engineer, Signal Design and Construction, 4901 Belfort Road, Suite 130 (S/C J–370), Jacksonville, Florida 32256.

CSX Transportation, Incorporated seeks approval of the proposed modification of the traffic control system on the single main track at North End Market, milepost S–823.90, on the Yeoman Subdivision, Florida Business Unit, consisting of the discontinuance and removal of the electric lock from switch 113, and removal of associated signals R114, LA114, and LD114.

The reason given for the proposed changes is to eliminate facilities no longer needed in present day operation.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) at DOT Central Docket Management Facility, Room PI–401 (Plaza Level), 400 Seventh Street, SW., Washington, DC 20590–0001. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov.*

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC, on October 23, 2001.

Grady C. Cothen, Jr.,

Deputy Associate Administrator, for Safety Standards and, Program Development.

[FR Doc. 01–27143 Filed 10–26–01; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From Requirements

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. 20502(a), the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Docket Number FRA–2001–10655

Applicant: Long Island Rail Road Company, Mr. Dennis C. George, PE, Chief Engineer, Jamaica Station, Jamaica, New York 11435

The Long Island Rail Road Company seeks relief from the requirements of the Rules, Standards and Instructions, Title 49 CFR, part 236, section 236.408, to the extent that route locking need not be provided for the proposed installation of three, train crew controlled, power-operated switches in the existing traffic control system, toward the replacement of the existing S119, S118A, and S118B electrically locked, hand-operated switches, near milepost 12.0 between Hall and Valley Interlockings on the Montauk Branch, at St. Albans, New York.

Applicant's justification for relief: To reduce injuries and switching times in pursuit of improvements in safety and operations.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) at DOT Central Docket Management Facility, Room PI–401 (Plaza Level), 400 Seventh Street, SW., Washington, DC 20590–0001. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's web site at *http://dms.dot.gov.*

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on October 23, 2001.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 01–27139 Filed 10–26–01; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From Requirements

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. 20502(a), the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

[Docket Number FRA–2001–10656]

Applicant: Union Pacific Railroad Company, Mr. Phil M. Abaray, Chief Engineer—Signals, 1416 Dodge Street, Room 1000, Omaha, Nebraska 68179–1000.

Union Pacific Railroad Company seeks approval of the proposed modification of the traffic control system, on three main tracks and two yard tracks, between mileposts 0.5 and 2.0 on the Omaha Subdivision, at Council Bluffs, Iowa, associated with track rearrangement and changes in train operation. The proposed changes consist of the following:

1. At CPB–000, milepost 0.5, removal of the power-operated crossover and controlled signals 662, 664, 670, and 672;

2. At CPB–001, milepost 1.0, installation of one power-operated switch, relocation of one power-operated switch, conversion of three power-operated switches to hand operation, and removal of controlled signals 606, 608, 610, 612, 614, 616, 618, 636, 640, 644, 646, 648, and 650;

3. At milepost 1.4, removal of automatic signals 13–5 and 14–5 on yard track 4; and

4. At CPB–002, milepost 2.0, revision of signal 512 to provide for a lunar aspect into non signaled yard tracks 4 and 5.

The reason given for the proposed changes is that track revisions and changes in operating practices make the signals redundant, because many of the signals were originally installed to protect switches that no longer exist. In addition dispatching duties and train

operations will be simplified, and removal of the signals from yard tracks 4 and 5 will facilitate switching operations.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) at DOT Central Docket Management Facility, Room PI–401 (Plaza Level), 400 Seventh Street, SW., Washington, DC 20590–0001. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov*.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on October 23, 2001.

Grady C. Cothen, Jr.,

Deputy Associate Administrator, for Safety Standards and Program Development.

[FR Doc. 01–27142 Filed 10–26–01; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2001–10854]

Michelin North America, Inc., Receipt of Application for Decision of Inconsequential Noncompliance

Michelin North America, Inc., (Michelin) has determined that approximately 1,400 11R24.5 Michelin XDY–EX LRH tires are not in full compliance with 49 CFR 571.119, Federal Motor Vehicle Safety Standard (FMVSS) No. 119, ''New pneumatic tires for vehicles other than passenger cars, '' and has filed an appropriate report pursuant to 49 CFR part 573, ''Defect and Noncompliance Reports.'' Michelin has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—''Motor Vehicle Safety'' on the basis that the noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

According to the application, ''During the period of the 29th week of 2001 through the 36th week of 2001, the Spartanburg, South Carolina plant of Michelin North America produced a number of tires with a portion of the DOT tire identification number marking (as required on one side of the tire by 49 CFR 571.119 S6.5b) which did not meet the usual specifications as described by 49 CFR 574.5.''

Instead of a required marking that reads: ''DOT B6 4F BVR X NN01'', the tires were marked: ''DOT B6 4F NN01 X BVR'' where NN is the week of fabrication and 01 is the year. All other performance requirements of FMVSS No. 119 are met or exceeded. Up to 1200 noncompliant tires have been delivered to end-users. The remaining noncompliant tires have been isolated in Michelin's warehouses and will be either brought into full compliance with the marking requirements of FMVSS No. 119 or scrapped.

Michelin supports its application for inconsequential noncompliance by stating that they do not believe the marking error will impact motor vehicle safety because the tires meet all Federal motor vehicle safety performance standards and the non-compliance is one of labeling.

Interested persons are invited to submit written data, views, and arguments on the application described above. Comments should refer to the docket number and be submitted to: U.S. Department of Transportation, Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. It is requested that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: November 28, 2001.

(49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on October 23, 2001.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 01–27135 Filed 10–26–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety Notice of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Material Regulation (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger—carrying aircraft.

DATES: Comments must be received on or before November 28, 2001.

ADDRESSES COMMENTS TO: Records Center, Research and Special Programs, Administration, U.S. Department of Transportation, Washington, DC. 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications (See Docket Number) are available for inspection at the New Docket Management Facility, PL–401, at the U.S. Department of Transportation, Nassif Building, 400 7th Street, SW. Washington, DC 20590 or at *http://dms.dot.gov.*

This notice of receipt of applications for new exemptions is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on October 23, 2001.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials, Exemptions and Approvals.

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of exemption thereof
12838–N	RSPA–01–10859	City Machine & Welding, Inc., Amarillo, TX.	49 CFR 173.302, 173.34.	To authorize the transportation in commerce of certain DOT Specification 3AA, 3AAX and 3T cylinders which have been alternatively ultrasonically retested. (modes 1, 2, 3)
12840–N	RSPA–01–10858	GreenField Compression, Inc., Richardson, TX.	49 CFR 173.314	To authorize the transportation in commerce of DOT–107A specification seamless steel tank car tanks containing hydrogen, compressed, Division 2.1. (mode 1)
12841–N	RSPA–01–10860	FIBA Technologies, Inc., Westboro, MA.	49 CFR 172.101, 178.338–10, 178.338–13, 178.338–2(c), 178.338–6(a), 178.338–9(b).	To authorize the manufacture, marking, sale and use of an IMO Type 7/US DOT MC 338 tank permanently fitted within an ISO frame for use in transporting various hazardous materials. (modes 1, 2)
12842–N	RSPA–01–10751	Giant Resource Recovery Aerosols, Inc. (GRR), Summerville, SC.	49 CFR 175.10(b)(2)	To authorize the transportation in commerce of aerosols, in specially designed containers for use in transporting Division 2.1 and 2.2 gases to collection site for recycling. (mode 1)
12843–N	RSPA–01–10752	United States Enrichment Corporation, Bethesda, MD.	49 CFR 173.420(a) (b) & (c).	To authorize the transportation in commerce of 48X and 48Y cylinders, which deviate from the ANSI 14.1 standards, containing uranium hexafluoride, Class 7. (modes 1, 3)
12844–N	RSPA–01–10753	Delphi Automotive Systems, Troy, MI.	49 CFR 173.301(h), 173.302(a), 175.3.	To authorize the manufacture, marking, sale and use of non-DOT specification pressure vessels for use as components of automobile vehicle safety systems. (mode 1)
12845–N	4.	Quantas Airways Limited, Los Angeles, CA.	49 CFR 175.10(b)(2)	To authorize the transportation in commerce of cylinders containing medical use compressed oxygen that exceed the present quantity limitation. (mode 5)

[FR Doc. 01–27136 Filed 10–26–01; 8:45 am]
BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Material Safety Notice of Applications for Modification of Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for modification of exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modifications of exemptions (e.g., to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix ''M'' denote a modification request. These applications have been separated from the new applications for exemptions to facilitate processing.

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

ADDRESS COMMENTS TO: Records Center, Research and Special Programs, Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Records Center, Nassif Building, 400 7th Street SW, Washington, DC or at *http://dms.dot.gov.*

This notice of receipt of applications for modification of exemptions is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on October 23, 2001.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials, Exemption and Approvals.

Application No.	Docket No.	Applicant	Modification of exemption
8915–M		Air Liquide America Corporation (See Footnote 1)	8915

Application No.	Docket No.	Applicant	Modification of exemption
10705–M		Baker Petrolite, Victoria, TX (See Footnote 2)	10705
10833–M		Health Care Waste Services, Bronx, NY (See Footnote 3)	10833
11327–M		Phoenix Services, Inc., Pasadena, MD (See Footnote 4)	11327
11344–M		E.I. DuPont de Nemours and Company, Wilmington, DE (See Footnote 5)	11344
11952–M	RSPA–97–3101	Department of Defense (MTMC), Alexandria, VA (See Footnote 6)	11952
12296–M	RSPA–99–5879	Clean Earth Systems, Inc., Tampa, FL (See Footnote 7)	12296
12473–M	RSPA–00–7431	Old Bridge Metals & Chemicals, Inc., Old Bridge, NJ (See Footnote 8)	12473
12772–M	RSPA–01–10155	Air Cruisers, Inc., Belmar, NJ (See Footnote 9)	12772

[1] To modify the exemption to authorize the addition of certain Division 2.1 and 2.2 materials transported in certain manifolded DOT Specification cylinders.

[2] To modify the exemption to authorize the use of contract carriers for the transportation of a Division 6.1 material, without the segregation requirements, by highway motor vehicle.

[3] To modify the exemption to authorize an additional non-DOT specification steel container for use as bulk outer packaging transporting Division 6.2 materials in dual packagings.

[4] To modify the exemption to authorize a change to the packaging requirements when transporting co-mingled medical waste and municipal solid waste and marking of the inner packaging.

[5] To modify the exemption to authorize the transportation of additional Class 3 materials in DOT Specification tank cars.

[6] To modify the exemption to authorize the use of a new laser guided training round configuration with a quantity increase of pressure vessels in the aluminum and wooden outer containers.

[7] To modify the exemption to authorize certain DOT Specification UN11HH2 composite Intermediate Bulk Containers as outer packaging for lab packs when transporting various classes of hazardous materials.

[8] To modify the exemption to authorize rail freight as an additional mode of transportation for the transportation of Class 8 materials in DOT Specification UN1H1 and UN1H2 plastic drums.

[9] To reissue an exemption originally issued on an emergency basis for the transportation of non-DOT specification cylinders, filled in excess of their marked service pressure, containing a Division 2.2 material.

[FR Doc. 01–27137 Filed 10–26–01; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34103]

New Mexico Gateway Railroad Limited Liability Company-Operation Exemption—Santa Teresa Limited Partnership

New Mexico Gateway Railroad Limited Liability Company, a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to operate approximately 3.5 miles of rail line owned by Santa Teresa Limited Partnership, at Santa Teresa, NM, as follows: (1) A 4,412-foot spur identified as Track A; (2) a 3,375-foot spur identified as Track B; (3) a 3,884-foot spur identified as Track C; (4) a 4,338-foot spur identified as Track D; and (5) a 2,728-foot runaround track.[1]

The transaction was expected to be consummated on or about October 15, 2001.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34103, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on John D. Heffner, 555 Twelfth Street, NW., Washington, DC 20004.

Board decisions and notices are available on our website at *''WWW.STB.DOT.GOV.''*

Decided: October 18, 2001.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 01–26907 Filed 10–26–01; 8:45 am]

BILLING CODE 4915–00–P

[1] Applicant states that the actual right-of-way occupied by the tracks is approximately 3700 feet or .70 miles in length.

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Submission for OMB Review; Comment Request

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995. OTS is soliciting public comments on the proposal.

DATES: Submit written comments on or before November 28, 2001.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to OMB and OTS at these addresses: Alexander Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503, or e-mail to *ahunt@omb.eop.gov;* and Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, fax to (202) 906–6518, or e-mail to *infocollection.comments@ots.treas.gov.* OTS will post comments and the related index on the OTS Internet Site at *www.ots.treas.gov.* In addition, interested persons may inspect comments at the Public Reference Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *publicinfo@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the submission to OMB, contact Sally W. Watts at sally.watts@ots.treas.gov, (202) 906–7380, or facsimile number (202) 906–6518, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information

collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Title of Proposal: Procedures for Monitoring Bank Secrecy Act.

OMB Number: 1550–0041.

Form Number: N/A.

Regulation Requirement: 31 CFR part 103, 12 CFR 563.177 and 563.180.

Description: Necessary to enable OTS to determine whether a savings association has implemented a program reasonably designed to assure and monitor compliance with the currency recordkeeping and reporting requirements established by Federal statute and U.S. Department of Treasury regulations.

Type of Review: Renewal.

Affected Public: Savings Associations.

Estimated Number of Respondents: 1,035.

Estimated Frequency of Response: Annually.

Estimated Burden Hours per Response: 2 hours.

Estimated Total Burden: 2,070 hours.

Clearance Officer: Sally W. Watts, (202) 906–7380, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

OMB Reviewer: Alexander Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: October 23, 2001.

Deborah Dakin,

Deputy Chief Counsel, Regulations and Legislation Division.

[FR Doc. 01–27166 Filed 10–26–01; 8:45 am]

BILLING CODE 6720–01–P

Federal Register

Monday,

October 29, 2001

Part II

Environmental Protection Agency

40 CFR Part 52

Approval and Promulgation of Air Quality Implementation Plans; Maryland; One-Hour Ozone Attainment Demonstration for the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD–074–3085; FRL–7089–1]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; One-Hour Ozone Attainment Demonstration for the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving the attainment demonstration for the one-hour ozone national ambient air quality standard (NAAQS) for the Philadelphia-Wilmington-Trenton severe nonattainment area (the Philadelphia area) as a revision to the Maryland State Implementation Plan (SIP). This control strategy plan was submitted by the Maryland Department of the Environment (MDE). The measures that have been adopted by the State which comprise the control strategy of the one-hour ozone attainment demonstration have and will result in significant emission reductions of volatile organic compounds (VOCs) and oxides of nitrogen (NO_X) in the Philadelphia area. The Philadelphia area is comprised of two counties in Delaware, one county in Maryland (namely, Cecil County), seven counties in New Jersey, and five counties in Pennsylvania. The intended effect of this action is to approve this SIP revision as meeting the requirements of the Clean Air Act (CAA or the Act).

DATES: This final rule is effective on November 28, 2001.

ADDRESSES: 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 Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224.

FOR FURTHER INFORMATION CONTACT: Cristina Fernandez, (215) 814–2178, at EPA Region III office above or by e-mail at *fernandez.cristina@epa.gov.*

SUPPLEMENTARY INFORMATION: This **SUPPLEMENTARY INFORMATION** section is organized to address the following questions:

I. Background

A. What Action Is EPA Taking In This Final Rulemaking?

EPA is approving the one-hour attainment demonstration submitted by Maryland for the Philadelphia area as fully meeting the requirements of CAA section 182(c)(2) and (d). The following table identifies submittal dates and amendment dates for the attainment demonstration:

TABLE 1.—SUMMARY OF ATTAINMENT DEMONSTRATION SUBMITTAL DATES

	Date	Content
Initial Submittal	April 29, 1998	Attainment Demonstration.
Amendment	August 18, 1998	Attainment Demonstration Revision Including Supplemental Regional Scale Modeling.
Amendment	December 21, 1999	Attainment Demonstration Revisions to Include Revised Motor Vehicle Emission Budgets.
Amendment	December 28, 2000	Attainment Demonstration Revision to Include Revised Motor Vehicle Emission Budgets to Reflect Tier 2 and Commitments.
Amendment	August 31, 2001	Attainment Demonstration Revision to Include Reasonably Available Control Measures Analysis.

B. What Previous Action Has Been Proposed on These SIP Revisions?

In a December 16, 1999 notice of proposed rulemaking (the December 16, 1999 NPR), we proposed approval of the attainment demonstration for the Philadelphia area (64 FR 70412).

On February 22, 2000 (65 FR 8703), EPA published a notice of availability on guidance memoranda relating to the ten one-hour ozone attainment demonstrations (including the Philadelphia area) proposed for approval or conditional approval on December 16, 1999. The guidance memoranda are entitled: ''Guidance on Motor Vehicle Emissions Budgets in One-Hour Ozone Attainment Demonstrations'' dated November 3, 1999, and ''Guidance on the Reasonably Available Control Measures (RACM) Requirement and Attainment Demonstration Submissions for Ozone Nonattainment Areas'' dated November 30, 1999.

On July 28, 2000, EPA published a supplemental notice of proposed rulemaking (SNPR) on the attainment demonstration (65 FR 46383). In that supplemental notice, we clarified and expanded on two issues relating to the motor vehicle emissions budgets in attainment demonstration SIP revisions. This supplemental notice is discussed in Section I.E. of this document.

On July 16, 2001, EPA published a SNPR on the attainment demonstration (66 FR 36964). In that supplemental notice, we proposed to approve the revised attainment demonstration that contains revised motor vehicle emissions budgets for the attainment year of 2005 which incorporate the benefits of the Federal Tier 2/Low Sulfur-in-fuel rule; and enforceable

commitments to (1) submit measures by October 31, 2001 for additional emission reductions as required in the attainment demonstration test and to revise the SIP and motor vehicle emissions budgets by October 31, 2001 if additional measures affect the motor vehicle emissions inventory, (2) submit revised SIP and motor vehicle emissions budgets within one year after MOBILE6 is issued, and (3) perform a mid-course review by December 31, 2003. We received no comments on the July 16, 2001 SNPR.

On September 7, 2001, EPA published a SNPR on the attainment demonstration (66 FR 46758). In that supplemental notice, we proposed to approve Maryland's analysis and determination, submitted on August 20, 2001, that there are no additional RACM for the area. We received no comments on that September 7, 2001 SNPR.

Comments received on the December 16, 2001 and July 28, 2000 proposed notices listed in this section relevant to the Philadelphia area attainment demonstration are discussed in Sections I.L. and II. of this document.

C. What Were the Conditions for Approval Provided in the Notice of Proposed Rulemaking for the Attainment Demonstration?

On December 16, 1999 (64 FR 70412) we proposed approval of the attainment demonstration submitted by the State of Maryland for the Philadelphia area. Our approval was contingent upon certain actions by Maryland. These actions were to:

(1) Adopt and submit adequate motor vehicle emissions budgets.

(2) Submit a list of control measures that, when implemented, would be expected to provide sufficient additional emission reductions to further reduce emissions to support the attainment test and a commitment that these measures would not involve additional limits on highway construction beyond those that could be imposed under the submitted motor vehicle emissions budget.

(3) Adopt and submit a rule for the regional NO_X reductions consistent with the modeling demonstration.

(4) Adopt and submit an enforceable commitment, or a reaffirmation of existing enforceable commitment to do the following:

(a) Submit measures by October 31, 2001 for additional emission reductions as required in the attainment demonstration test, and for additional emission reduction measures developed through the regional process; submit an enforceable commitment for the additional measures and a backstop commitment to adopt and submit intrastate measures for the emission reductions in the event the regional process does not recommend measures that produce emission reductions.

(b) Submit a revised SIP and motor vehicle emissions budget by October 31, 2001 if additional measures affect the motor vehicle emissions inventory.

(c) Submit revised SIP and motor vehicle emissions budgets one year after MOBILE6 is issued.

(d) Perform a mid-course review by December 31, 2003.

D. What Amendments to the Attainment Demonstration SIP Did Maryland Submit for the Philadelphia Area Since December 16, 1999?

The following is a summary of such submittals which includes the submittal dates of revisions, the content of these submissions and other pertinent facts regarding these submissions:

(1) On December 21, 1999, Maryland submitted the ''State Implementation Plan (SIP) Revision: Modification to the Phase II Attainment Plan for the Baltimore Nonattainment Area and Cecil County: Revising the Mobile Source Emission Budgets.'' This submittal contained the revised 2005 motor vehicle emission budgets for the Attainment Plans for the Baltimore Nonattainment Area and for Maryland's portion of the Philadelphia area, namely Cecil County.

(2) On December 28, 2000, Maryland submitted the ''State Implementation Plan (SIP) Revision: Modification to the Phase II Attainment Plan for Cecil County: Revising the Mobile Source Emission Budgets, Adding Tier 2 Standards.'' This submittal contained the revised 2005 motor vehicle emissions budgets for the attainment demonstration that reflect the benefits of the Tier 2/Low Sulfur-in-fuel rule benefits and revised commitments to do the following:

(a) Submit measures by October 31, 2001 for additional emission reductions as required in the attainment demonstration test, and to revise the SIP and motor vehicle emissions budgets if the additional measures affect the motor vehicle emissions inventory,

(b) Revise the SIP and motor vehicle emission budgets using MOBILE6 within one year after it is issued.

(c) Perform a mid-course review by December 31, 2003.

(3) On August 31, 2001, Maryland submitted the ''State Implementation Plan (SIP) Revision: Reasonably Available Control Measures Analysis for the Baltimore Region.'' This submittal supplements the attainment demonstration SIP for Cecil County by including a RACM analysis.

E. What Did EPA's Supplemental Notices of Proposed Rulemaking Cover?

(1) On July 28, 2000, EPA published a supplemental notice of proposed rulemaking (SNPR) on the attainment demonstration (65 FR 46383). In that supplemental notice, we clarified and expanded on two issues relating to the motor vehicle emissions budgets in this attainment demonstration SIP revision:

(a) First, we proposed a clarification of what occurs if we finalize conditional or full approval of this and certain other attainment demonstration SIP revisions based on a state commitment to revise the SIP's motor vehicle emissions budgets in the future. Under the proposal, the motor vehicle emissions budgets in the approved SIP will apply for transportation conformity purposes only until the budgets are revised consistent with the commitment and we have found the new budgets adequate. Once we have found the newly revised budgets adequate, then they would apply instead of the previous conditionally or fully approved budgets. Normally, revisions to approved budgets cannot be used for conformity purposes until we approve the revised budgets into the SIP. Therefore, we proposed to clarify that when our approval of this and certain other one-hour ozone attainment demonstrations is based on a commitment to future revisions to the budget, our approval of the budget lasts only until revisions to satisfy those conditions are submitted and we find them adequate.

(b) Second, we proposed that states may opt to commit to revise their emissions budgets one year after the release of the MOBILE6 model, as originally proposed on December 16, 1999; or states may commit to a new option, i.e., to revise their budgets two years following the release of the MOBILE6 model, provided that conformity is not determined without adequate MOBILE6-derived SIP budgets during the second year. This second option did not affect the Maryland's attainment demonstration SIP for the Philadelphia area because Maryland has submitted an enforceable commitment to revise the motor vehicle emissions budgets within one year after the official release of the MOBILE6 model. EPA is approving that commitment in this final rulemaking.

(c) In addition, we reopened the comment period to take comment on these two issues and to allow comment on any additional materials that were placed in the dockets for the proposed actions close to or after the initial

comment period closed on February 14, 2000 (65 FR at 46383, July 28, 2000). For many of the areas, additional information had been placed in the docket close to or since the initial comment period concluded. In general, these materials were identified as consisting of motor vehicle emissions budgets, and revised or additional commitments or reaffirmations submitted by the states (65 FR at 46383, July 28, 2000).

(2) On July 16, 2001, EPA published a SNPR on the attainment demonstration (66 FR 36964). In that supplemental notice, we proposed to approve:

(a) The revised attainment demonstration that contains revised motor vehicle emissions budgets for the attainment year of 2005 which incorporate the benefits of the Federal Tier 2/Low Sulfur-in-fuel rule, and,

(b) Enforceable commitments to submit measures by October 31, 2001 for additional emission reductions as required in the attainment demonstration test, revise the SIP and motor vehicle emissions budgets by October 31, 2001 if additional measures affect the motor vehicle emissions inventory, submit revised SIP and motor vehicle emissions budgets within one year after MOBILE6 is issued, and to perform a mid-course review by December 31, 2003. In this final rulemaking, EPA is approving the attainment demonstration which contains the revised motor vehicle emissions budgets for the attainment year of 2005 which incorporate the benefits of the Federal Tier 2/Low Sulfur-in-fuel rule and all three of these commitments.

(3) On September 7, 2001, EPA published a SNPR on the attainment demonstration (66 FR 46758). In that supplemental notice, we proposed to approve Maryland's analysis and determination, submitted on August 20, 2001, that there are no additional RACM for the area. We received no comments on that September 7, 2001 SNPR. In this final rule, EPA is approving Maryland's 2005 attainment demonstration plan for the Philadelphia area including this RACM analysis.

F. When Did EPA Make a Determination Regarding the Adequacy of the Motor Vehicle Emissions Budgets for the Maryland Portion of the Philadelphia Area?

Maryland submitted a revision to the attainment plan SIP for the Philadelphia area on December 28, 2000. This revision contained revised motor vehicle emissions budgets for the attainment year of 2005 that reflected the benefits of the Federal Tier 2/Low Sulfur rule.[1]

We began our adequacy review process on the budgets in the December 28, 2000 submittal under our adequacy process with a posting on EPA's Web site *(www.epa.gov/otaq/transp/conform/adequacy.htm)* that started a public comment period on the adequacy of the motor vehicle emissions budgets in the December 28, 2000 SIP revision submitted by Maryland for the Philadelphia area. We then prepared a technical support document for our adequacy determination that included responses to any public comments received during the adequacy process comment period. In an April 12, 2001 **Federal Register** notice we announced that we had determined the budgets contained in the December 28, 2000 submission were adequate (66 FR 18928). (The proposed approval of the budgets in the December 28, 2000 submission is discussed in Section I.E. of this document and the response to any comments received on the proposed approval are in Section II.) Our findings of adequacy and responses to comments can be accessed at *www.epa.gov/otaq/traq* (once there, click on the ''conformity'' button). As stated previously, Maryland has made an enforceable commitment to revise the attainment year motor vehicle emissions budgets using the MOBILE6 model within one year after the release of the MOBILE6 model, and EPA is approving that commitment in this final rulemaking.

G. What SIP Elements Did EPA Take Final Action on Concurrently or Before the Full Approval of the Attainment Demonstration Could Be Granted?

In the December 16, 1999 NPR for the Philadelphia attainment demonstration SIP, EPA noted in Table 4, the status of many of the control measures or SIP elements that are required under part D of the Act for serious and severe areas. The following provides the status of those SIP elements which are prerequisites for approval of the attainment demonstration but which were not fully approved on December 16, 1999 or not listed as fully approved in Table 4 of the December 16, 1999 NPR:

(1) On July 29, 1997 (62 FR 40457), EPA approved Maryland's 15 percent VOC Reduction Plan for the Cecil County as a revision to the Maryland SIP.

(2) On October 29, 1999, EPA approved Maryland's enhanced vehicle inspection and maintenance program as a SIP revision (64 FR 58340).

(3) On December 28, 1999, EPA approved Maryland's national low emission vehicle (NLEV) program as a SIP revision (64 FR 72564).

(4) On December 15, 2000, EPA approved Maryland's NO_X budget rule, which is consistent with the Ozone Transport Commission's (OTC) NO_X Memorandum of Understanding (MOU) Phase II as a SIP revision (65 FR 78416).

(5) On January 10, 2001, EPA approved Maryland's NO_X trading rule which complies with the NO_X SIP Call as a revision to the Maryland SIP (66 FR 1866).

(6) On February 8, 2001, EPA approved Maryland's NO_X RACT rule as a SIP revision (66 FR 9522).

(7) On September 19, 2001, EPA approved Maryland's Post-1996 Rate-of-Progress (ROP) plan (from 1996 through the 2005 attainment year) for the Philadelphia area, namely, Cecil County (66 FR 48209).

To comply with the VOC RACT requirements, Maryland has developed source category rules. Sources of VOC in the Maryland portion of the Philadelphia area, namely Cecil County, which emit more than 25 tons per year (TPY) and that are not subject to any specific source category rule are then subject to Maryland's SIP-approved regulation COMAR 26.11.06.06—Volatile Organic Compounds. Such sources may apply on a case-by case basis for an alternative RACT under COMAR 26.11.19.02G—Control of Major Stationary Sources of Volatile Organic Compounds. But until such a case-by-case RACT determination is made by the MDE and approved by EPA as a SIP revision, the source remains subject to COMAR 26.11.06.06. The following provides the status of those VOC source category rules which are prerequisites for approval of the attainment demonstration but which were not fully approved, as of December 16, 1999, as revisions to the Maryland SIP:

(1) On August 19, 1999, EPA approved Maryland's Fiberglass Manufacturing Rule (64 FR 45182).

(2) On January 14, 2000, EPA approved Maryland's Flexographic Printing and Plastic Bottle Coating Rule (65 FR 2334).

[1] In December 16, 1999 NPR, we proposed to disapprove the attainment demonstration if Maryland did not submit motor vehicle emissions budgets for this area that EPA could find adequate by May 31, 2000 (See 64 FR 70417). The budgets subject to this May 31, 2000 deadline did not necessary have to account for Federal Tier 2/Low Sulfur rule reductions. On December 21, 1999, Maryland submitted a SIP revision that included motor vehicle emissions budgets for the 2005 attainment year that did not include the benefits of the Federal Tier 2/Low Sulfur rule. EPA had determined that these budgets were adequate by the May 31, 2000 deadline (65 FR 36441, June 8, 2000).

(3) On May 7, 2001, EPA approved Maryland's Bread and Snack Food Drying Operations and Expandable Polystyrene Operations Rules (66 FR 22924).

(4) On September 5, 2001, EPA approved Maryland's Marine Vessel Coating Rule (66 FR 46379).

(5) On September 20, 2001, EPA approved Maryland's Synthetic Organic Chemicals Rule (66 FR 37914).

(6) On October 5, 2001, the Regional Administrator of EPA Region III signed a final rule approving Maryland's VOC RACT rules for Iron & Steel Operations. That action has been or soon will be published in the **Federal Register**.

(7) On October 9, 2001, the Regional Administrator of EPA Region III signed a final rule approving Maryland's VOC RACT rules for Aerospace Coating, Kraft Pulp Mills, and Distilled Spirits Facilities. That action has been or soon will be published in the **Federal Register**.

H. What Measures Are in the Control Strategy for the Attainment Demonstration?

TABLE 2.—CONTROL MEASURES IN THE ONE-HOUR OZONE ATTAINMENT DEMONSTRATION FOR THE PHILADELPHIA NONATTAINMENT AREA

Control measure	Type of measure	Credited in attainment plan
Enhanced Inspection & Maintenance	SIP Approved	Yes.
Federal Motor Vehicle Control Program	Federal	Tiers 1 and 2.
NLEV [1]	SIP Approved	Yes.
Reformulated Gasoline (Phases 1 & 2)	Federal	Phase 2.
Federal Non-road Gasoline Engine Standards	Federal	Yes.
Federal Non-road Heavy Duty Diesel Engine Standards	Federal	Yes.
Rail Road Locomotive Controls	Federal	Yes.
Stage II Vapor Recovery & On-board Refueling Vapor Recovery (ORVR).	SIP Approved; Federal	Yes.
AIM Surface Coatings	Federal	Yes.
Consumer & Commercial Products	Federal	Yes.
Autobody Refinishing	SIP Approved	Yes.
Surface Cleaning/Degreasing Controls	SIP Approved	Yes.
Open Burning Ban	SIP Approved	Yes.
Marine Engine Emission Standards	Federal	Yes.
Stage I Vapor Recovery	SIP Approved	Yes.
Graphic Art Controls	SIP Approved	Yes.
Heavy Duty Diesel Engines (On-road)	Federal	Yes.
VOC RACT to 25 tpy	SIP Approved	Yes.

Notes:
[1] To the extent NLEV not superceded by Tier 2.

I. What Are the Approved Transportation Conformity Budgets, and What Effect Does This Action Have on Transportation Planning?

(1) What Are the Approved Transportation Conformity Budgets in the Attainment Demonstration?

EPA has determined that the budgets in the attainment demonstration are adequate. The approved motor vehicle emissions budgets of the attainment demonstration are listed in Table 3. Table 3 also provides the amounts by pollutant in tons per day (TPD), the year associated with the budgets, and the effective date of EPA's adequacy determination.

TABLE 3.—TRANSPORTATION CONFORMITY BUDGETS FOR THE MARYLAND PORTION OF THE PHILADELPHIA AREA

Control strategy SIP	Year	VOC (TPD)	NO_X (TPD)	Date of adequacy determination
Attainment Demonstration	2005	2.6	5.6	April 27, 2001 (See 66 FR 18928, published on April 12, 2001).

EPA has concluded that Maryland's 2005 attainment demonstration SIP for the Philadelphia area, including its associated budgets for Cecil County, meets the requirements of the CAA. EPA has also determined that Maryland's SIP contains the measures necessary to support these budgets. In this final action, EPA is approving these budgets which were submitted on December 28, 2000 by the State of Maryland as a formal revision to its attainment demonstration SIP for the Philadelphia area.

(2) Is a Requirement to Redetermine Conformity Within 18 months Under Section 93.104 of the Conformity Rule Triggered?

Our conformity rule establishes the frequency by which transportation plans and transportation improvement programs must be found to conform to the SIP and includes trigger events tied to both submittal and approval of a SIP [40 CFR 93.104(e)]. Both initial submission and initial approval trigger a redetermination of conformity. This final rule approves motor vehicle emissions budgets contained in the attainment demonstration. We are advising affected transportation planning agencies that this final

approval of the budgets is listed in Table 3 will require a redetermination that existing transportation plans and TIPs conform within 18 months of the effective date listed in the **DATES** section of this document. See 40 CFR 93.104(e).

J. What Happens to the Approved 2005 Budgets When States Change Their Budgets Using the MOBILE6 Model?

All states whose attainment demonstration includes the effects of the Tier 2/Low Sulfur program have committed to revise and resubmit their motor vehicle emissions budgets after EPA releases the MOBILE6 model. On December 28, 2000, Maryland submitted a commitment to revise the 2005 motor vehicle budgets in the attainment demonstration within one year of EPA's release of the MOBILE6 model. In this action, EPA is approving this commitment to revise the 2005 motor vehicle budgets in the attainment demonstration within one year of EPA's release of the MOBILE6 model. If Maryland fails to meet its commitment to submit revised budgets using the MOBILE6 model, EPA could make a finding of failure to implement the SIP, which would start a sanctions clock under section 179 of the Act.

As we proposed in our July 28, 2000 SNPR (65 FR 46383), today's final approval of the budgets contained in the 2005 attainment plan will be effective for conformity purposes only until such time as revised motor vehicle emissions budgets are submitted (pursuant to the commitment to submit revised budgets using the MOBILE6 model within one year of EPA's release of that model) and we have found those revised budgets adequate. We are only approving the attainment demonstration and its current budgets because Maryland has provided an enforceable commitment to revise the budgets using the MOBILE6 model within one year of EPA's release of that model. Therefore, we are limiting the duration of our approval of the current budgets only until such time as the revised budgets are found adequate. Those revised budgets will be more appropriate than the budgets we are approving for conformity purposes for the time being.

Similarly, EPA is only approving the 2005 attainment demonstration and its currents budgets because Maryland has provided an enforceable commitment to submit new budgets as a revision to the attainment SIP consistent with any new measures submitted to fill any shortfall, if the additional control measures affect on-road motor vehicle emissions. Therefore, EPA is limiting the duration of its approval of the current budgets only until such time as any such revised budgets are found adequate. Those revised budgets will be more appropriate than the budgets EPA is approving for conformity purposes for the time being.

K. What Is the Status of Maryland's New Source Review (SIP)?

EPA approved Maryland's NSR program on February 12, 2001 (66 FR 9766). As stated in the proposed (65 FR 62675, October 19, 2000) and final rulemaking notices, EPA granted limited approval of Maryland's NSR regulations as they apply in the Baltimore area and the Maryland portion of the Philadelphia area, and granted full approval throughout the remainder of Maryland. EPA's sole reason for granting limited approval in the Baltimore area and in Cecil County rather than full approval was that Maryland's NSR regulations do not contain certain restrictions on the use of emission reductions from the shutdown and curtailment of existing sources or units as NSR offsets. These restrictions, however, only apply in nonattainment areas without an approved attainment demonstration [See 40 CFR section 51.165(a)(ii)(C)]. As EPA today is taking final action to approve Maryland's attainment demonstration SIPs for the Baltimore and Philadelphia areas, Maryland's SIP-approved NSR program's lack of restrictions on the use of emission reductions from the shutdown and curtailment of existing sources or units as NSR offsets, applicable only in nonattainment areas without an approved attainment demonstration, is moot. Now that we have approved Maryland's attainment demonstration SIPs for the Baltimore and Philadelphia areas, we intend to remove the limited nature of our approval of the State's NSR program in those areas of Maryland as well.

L. What Comments Were Received on the Proposed Approvals and How Has EPA Responded to Them?

EPA received comments from the public on the Notice of Proposed Rulemaking (NPR) published on December 16, 1999 (64 FR 70412) for Maryland's ozone attainment demonstration for the Philadelphia area. Comments were received from Robert E. Yuhnke on behalf of Environmental Defense and Natural Resources Defense Council; the Midwest Ozone Group; and from the University of Maryland Law School on behalf of 1000 Friends of Maryland.

EPA also received comments from the public on the supplemental notice of proposed rulemaking published on July 28, 2000 (65 FR 46383), in which EPA clarified and expanded on two issues relating to the motor vehicle emissions budgets in the attainment demonstration SIPs. Comments were received from Environmental Defense and from ELM Packaging Co.

II. Response to Comments

The following discussion summarizes and responds to the comments received on the December 16, 1999 (64 FR 70412) and July 28, 2000 (65 FR 46383) proposed actions summarized in Sections I.B. and I.E.

A. Attainment Demonstration—Weight of Evidence

Comment: The weight of evidence approach does not demonstrate attainment or meet CAA requirements for a modeled attainment demonstration. Commenters added several criticisms of various technical aspects of the weight of evidence approach, including certain specific applications of the approach to particular attainment demonstrations. These comments are discussed in the following response.

Response: Under section 182(c)(2) and (d) of the CAA, serious and severe ozone nonattainment areas were required to submit by November 15, 1994, demonstrations of how they would attain the one-hour standard. Section 182(c)(2)(A) provides that ''[t]his attainment demonstration must be based on photochemical grid modeling or any other analytical method determined by the Administrator, in the Administrator's discretion, to be at least as effective.'' As described in more detail below, EPA allows states to supplement their photochemical modeling results, with additional evidence designed to account for uncertainties in the photochemical modeling, to demonstrate attainment. This approach is consistent with the requirement of section 182(c)(2)(A) that the attainment demonstration ''be based on photochemical grid modeling,'' because the modeling results constitute the principal component of EPA's analysis, with supplemental information designed to account for uncertainties in the model. This interpretation and application of the photochemical modeling requirement of section 182(c)(2)(A) finds further justification in the broad deference Congress granted EPA to develop appropriate methods for determining attainment, as indicated in the last phrase of section 182(c)(2)(A).

The flexibility granted to EPA under section 182(c)(2)(A) is reflected in the regulations EPA promulgated for modeled attainment demonstrations. These regulations provide, ''The

adequacy of a control strategy shall be demonstrated by means of applicable air quality models, data bases, and other requirements specified in [40 CFR part 51 Appendix W] (Guideline on Air Quality Models).''[2] 40 CFR 51.112(a)(1). However, the regulations further provide, ''Where an air quality model specified in Appendix W * * * is inappropriate, the model may be modified or another model substituted [with approval by EPA, and after] notice and opportunity for public comment. * * *'' Appendix W, in turn, provides that, ''The Urban Airshed Model (UAM) is recommended for photochemical or reactive pollutant modeling applications involving entire urban areas,'' but further refers to EPA's modeling guidance for data requirements and procedures for operating the model. See 40 CFR part 51 Appendix W section 6.2.1.a. The modeling guidance discusses the data requirements and operating procedures, as well as interpretation of model results as they relate to the attainment demonstration. This provision references guidance published in 1991, but EPA envisioned the guidance would change as we gained experience with model applications, which is why the guidance is referenced, but does not appear, in Appendix W. With updates in 1996 and 1999, the evolution of EPA's guidance has led us to use both the photochemical grid model, and additional analytical methods approved by EPA.

The modeled attainment test compares model predicted one-hour daily maximum ozone concentrations in all grid cells for the attainment year to the level of the NAAQS. The results may be interpreted through either of two modeled attainment or exceedance tests: the deterministic test or the statistical test. Under the deterministic test, a predicted concentration above 0.124 parts per million (ppm) ozone indicates that the area is expected to exceed the standard in the attainment year and a prediction at or below 0.124 ppm indicates that the area is expected to not exceed the standard. Under the statistical test, attainment is demonstrated when all predicted (i.e., modeled) one-hour ozone concentrations inside the modeling domain are at, or below, an acceptable upper limit above the NAAQS permitted under certain conditions (depending on the severity of the episode modeled).[3]

In 1996, EPA issued guidance [4] to update the 1991 guidance referenced in 40 CFR part 51 Appendix W, to make the modeled attainment test more closely reflect the form of the NAAQS (i.e., the statistical test described above), to consider the area's ozone design value and the meteorological conditions accompanying observed exceedances, and to allow consideration of other evidence to address uncertainties in the modeling databases and application. When the modeling does not conclusively demonstrate attainment, EPA has concluded that additional analyses may be presented to help determine whether the area will attain the standard. As with other predictive tools, there are inherent uncertainties associated with air quality modeling and its results. The inherent imprecision of the model means that it may be inappropriate to view the specific numerical result of the model as the only determinant of whether the SIP controls are likely to lead to attainment. The EPA's guidance recognizes these limitations, and provides a means for considering other evidence to help assess whether attainment of the NAAQS is likely to be achieved. The process by which this is done is called a weight of evidence (WOE) determination. Under a WOE determination, the state can rely on, and EPA will consider in addition to the results of the modeled attainment test, other factors such as other modeled output (*e.g.,* changes in the predicted frequency and pervasiveness of one-hour ozone NAAQS exceedances, and predicted change in the ozone design value); actual observed air quality trends (i.e. analyses of monitored air quality data); estimated emissions trends; and the responsiveness of the model predictions to further controls.

In 1999, EPA issued additional guidance[5] that makes further use of model results for base case and future emission estimates to predict a future design value. This guidance describes the use of an additional component of the WOE determination, which requires, under certain circumstances, additional emission reductions that are or will be approved into the SIP, but that were not included in the modeling analysis, that will further reduce the modeled design value. An area is considered to monitor attainment if each monitor site has air quality observed ozone design values (4th highest daily maximum ozone using the three most recent consecutive years of data) at or below the level of the standard. Therefore, it is appropriate for EPA, when making a determination that a control strategy will provide for attainment, to determine whether or not the model predicted future design value is expected to be at or below the level of the standard. Since the form of the one-hour NAAQS allows exceedances, it did not seem appropriate for EPA to require the test for attainment to be ''no exceedances'' in the future model predictions.

The method outlined in EPA's 1999 guidance uses the highest measured design value across all sites in the nonattainment area for each of three years. These three ''design values'' represent the air quality observed during the time period used to predict ozone for the base emissions. This is appropriate because the model is predicting the change in ozone from the base period to the future attainment date. The three yearly design values (highest across the area) are averaged to account for annual fluctuations in meteorology. The result is an estimate of an area's base year design value. The base year design value is multiplied by a ratio of the peak model predicted ozone concentrations in the attainment year (i.e., average of daily maximum concentrations from all days modeled) to the peak model predicted ozone concentrations in the base year (i.e., average of daily maximum concentrations from all days modeled). The result is an attainment year design value based on the relative change in peak model predicted ozone concentrations from the base year to the attainment year. Modeling results also show that emission control strategies designed to reduce areas of peak ozone concentrations generally result in similar ozone reductions in all core areas of the modeling domain, thereby providing some assurance of attainment at all monitors.

In the event that the attainment year design value is above the standard, the 1999 guidance provides a method for identifying additional emission reductions, not modeled, which at a minimum provide an estimated attainment year design value at the level of the standard. This step uses a locally derived factor which assumes a linear relationship between ozone and the precursors.

[2] The August 12, 1996 version of ''Appendix W to part 51—Guideline on Air Quality Models'' was the rule in effect for these attainment demonstrations. EPA is proposing updates to this rule, that will not take effect until the rulemaking process for them is complete.

[3] Guidance on the Use Of Modeled Results to Demonstrate Attainment of the Ozone NAAQS. EPA–454/B–95–007, June 1996.

[4] Ibid.

[5] ''Guidance for Improving Weight of Evidence Through Identification of Additional Emission Reductions, Not Modeled.'' U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Emissions, Monitoring, and Analysis Division, Air Quality Modeling Group, Research Triangle Park, NC 27711. November 1999. Web site: *http://www.epa.gov/ttn/scram.*

A commenter criticized the 1999 guidance as flawed on grounds that it allows the averaging of the three highest air quality sites across a region, whereas EPA's 1991 and 1996 modeling guidance requires that attainment be demonstrated at each site. This has the effect of allowing lower air quality concentrations to be averaged against higher concentrations thus reducing the total emission reduction needed to attain at the higher site. The commenter does not appear to have described the guidance accurately. The guidance does not recommend averaging across a region or spatial averaging of observed data. The guidance does recommend determination of the highest site in the region for each of the three-year periods, determined by the base year modeled. For example, if the base year is 1990, it is the amount of emissions in 1990 that must be adjusted or evaluated (by accounting for growth and controls) to determine whether attainment results. These 1990 emissions would contribute to three design value periods (1988–90, 1989–91 and 1990–92).

Under the approach of the guidance document, EPA determined the design value for each of those three-year periods, and then averaged those three design values, to determine the base design value. This approach is appropriate because, as just noted, the 1990 emissions contributed to each of those periods, and there is no reason to believe the 1990 (episodic) emissions resulted in the highest or lowest of the three design values. Averaging the three years is beneficial for another reason: It allows consideration of a broader range of meteorological conditions—those that occurred throughout the 1988–1992 period, rather than the meteorology that occurs in one particular year or even one particular ozone episode within that year. Furthermore, EPA relied on three-year averaging only for purposes of determining one component, *i.e.*—the small amount of additional emission reductions not modeled—of the WOE determination. The WOE determination, in turn, is intended to be part of a qualitative assessment of whether additional factors (including the additional emissions reductions not modeled), taken as a whole, indicate that the area is more likely than not to attain.

A commenter criticized the component of this WOE factor that estimates ambient improvement because it does not incorporate complete modeling of the additional emissions reductions. However, the regulations do not mandate, nor does EPA guidance suggest, that states must model all control measures being implemented. Moreover, a component of this technique—the estimation of future design value—should be considered a model-predicted estimate. Therefore, results from this technique are an extension of ''photochemical grid'' modeling and are consistent with section 182(c)(2)(A). Also, a commenter believes that EPA has not provided sufficient opportunity to evaluate the calculations used to estimate additional emission reductions. EPA provided a full 60-day period for comment on all aspects of the proposed rule. EPA has received several comments on the technical aspects of the approach and the results of its application, as discussed above and in the responses to the individual SIPs.

A commenter states that application of the method of attainment analysis used for the December 16, 1999 NPRs will yield a lower control estimate than if we relied entirely on reducing maximum predictions in every grid cell to less than or equal to 124 ppb on every modeled day. However, the commenter's approach may overestimate needed controls because the form of the standard allows up to 3 exceedances in 3 years in every grid cell. If the model over predicts observed concentrations, predicted controls may be further overestimated. EPA has considered other evidence, as described above through the weight of evidence determination.

When reviewing a SIP, EPA must make a determination that the control measures adopted are reasonably likely to lead to attainment. Reliance on the WOE factors allows EPA to make this determination based on a greater body of information presented by the states and available to EPA. This information includes model results for the majority of the control measures. Although not all measures were modeled, EPA reviewed the model's response to changes in emissions as well as observed air quality changes to evaluate the impact of a few additional measures, not modeled. EPA's decision was further strengthened by each state's commitment to check progress towards attainment in a mid-course review and to adopt additional measures, if the anticipated progress is not being made.

A commenter further criticized EPA's technique for estimating the ambient impact of additional emissions reductions not modeled on grounds that EPA employed a ''rollback'' modeling technique that, according to the commenter, is precluded under EPA regulations. The commenter explained that 40 CFR part 51 Appendix W section 6.2.1.e. provides, ''Proportional (rollback/forward) modeling is not an acceptable procedure for evaluating ozone control strategies.'' Section 14.0 of Appendix W defines ''rollback'' as ''a simple model that assumes that if emissions from each source affecting a given receptor are decreased by the same percentage, ambient air quality concentrations decrease proportionately.'' Under this approach if 20 percent improvement in ozone is needed for the area to reach attainment, it is assumed a 20 percent reduction in VOC would be required. There was no approach for identifying NO_X reductions.

The ''proportional rollback'' approach is based on a purely empirically/mathematically derived relationship. EPA did not rely on this approach in its evaluation of the attainment demonstrations. The prohibition in Appendix W applies to the use of a rollback method which is empirically/mathematically derived and independent of model estimates or observed air quality and emissions changes as the sole method for evaluating control strategies. For the demonstrations under proposal, EPA used a locally derived (as determined by the model and/or observed changes in air quality) ratio of change in emissions to change in ozone to estimate additional emission reductions to achieve an additional increment of ambient improvement in ozone.

For example, if monitoring or modeling results indicate that ozone was reduced by 25 ppb during a particular period, and that VOC and NO_X emissions fell by 20 tons per day and 10 tons per day respectively during that period, EPA developed a ratio of ozone improvement related to reductions in VOC and NO_X. This formula assumes a linear relationship between the precursors and ozone for a small amount of ozone improvement, but it is not a ''proportional rollback'' technique. Further, EPA uses these locally derived adjustment factors as a component to estimate the extent to which additional emissions reductions—not the core control strategies—would reduce ozone levels and thereby strengthen the weight of evidence test. EPA uses the UAM to evaluate the core control strategies.

This limited use of adjustment factors is more technically sound than the unacceptable use of proportional rollback to determine the ambient impact of the entire set of emissions reductions required under the attainment SIP. The limited use of adjustment factors is acceptable for practical reasons: It obviates the need to expend more time and resources to perform additional modeling. In

addition, the adjustment factor is a locally derived relationship between ozone and its precursors based on air quality observations and/or modeling which is more consistent with recommendations referenced by Appendix W and does not assume a direct proportional relationship between ozone and its precursors. Lastly, the requirement that areas perform a mid-course review (a check of progress toward attainment) provides a margin of safety.

A commenter expressed concerns that EPA used a modeling technique (proportional rollback) that was expressly prohibited by 40 CFR part 51 Appendix W, without expressly proposing to do so in a notice of proposed rulemaking. However, the commenter is mistaken. As explained above, EPA did not use or rely upon a proportional rollback technique in this rulemaking, but used UAM to evaluate the core control strategies and then applied its WOE guidance. Therefore, because EPA did not use an ''alternative model'' to UAM, it did not trigger an obligation to modify Appendix W. Furthermore, EPA did propose the use the November 1999 guidance ''Guidance for Improving Weight of Evidence Through Identification of Additional Emission Reductions, Not Modeled'' in the December 16, 1999 NPR and has responded to all comments received on that guidance elsewhere in this document.

A commenter also expressed concern that EPA applied unacceptably broad discretion in fashioning and applying the WOE determinations. For all of the attainment submittals proposed for approval in December 1999 concerning serious and severe ozone nonattainment areas, EPA first reviewed the UAM results. In all cases, the UAM results did not pass the deterministic test. In two cases—Milwaukee and Chicago—the UAM results passed the statistical test; in the rest of the cases, the UAM results failed the statistical test. The UAM has inherent limitations that, in EPA's view, were manifest in all these cases. These limitations include: (1) Only selected time periods were modeled, not the entire three-year period used as the definitive means for determining an area's attainment status; (2) inherent uncertainties in the model formulation and model inputs such as hourly emission estimates, emissions growth projections, biogenic emission estimates, and derived wind speeds and directions. As a result, for all areas, even Milwaukee and Chicago, EPA examined additional analyses to indicate whether additional SIP controls would yield meaningful reductions in ozone values. These analyses did not point to the need for additional emission reductions for Springfield, Greater Connecticut, Metropolitan Washington DC, Chicago and Milwaukee, but did point to the need for additional reductions, in varying amounts, in the other areas. As a result, the other areas submitted control requirements to provide the indicated level of emissions reductions. EPA applied the same methodology in these areas, but because of differences in the application of the model to the circumstances of each individual area, the results differed on a case-by-case basis.

As another WOE factor, for areas within the NO_X SIP call domain, results from the EPA regional modeling for NO_X controls as well as the Tier2/Low Sulfur program were considered. Also, for all of the areas, EPA considered recent changes in air quality and emissions. For some areas, this was helpful because there were emission reductions in the most recent years that could be related to observed changes in air quality, while for other areas there appeared to be little change in either air quality or emissions. For areas in which air quality trends, associated with changes in emissions levels, could be discerned, these observed changes were used to help decide whether or not the emission controls in the plan would provide progress towards attainment.

The commenter also complained that EPA has applied the WOE determinations to adjust modeling results only when those results indicate nonattainment, and not when they indicate attainment. First, we disagree with the premise of this comment: EPA does not apply the WOE factors to adjust model results. EPA applies the WOE factors as additional analysis to compensate for uncertainty in the air quality modeling. Second, EPA has applied WOE determinations to all of the attainment demonstrations proposed for approval in December 1999. Although for most of them, the air quality modeling results by themselves indicated nonattainment, for two metropolitan areas—Chicago and Milwaukee, including parts of the States of Illinois, Indiana, and Wisconsin, the air quality modeling did indicate attainment on the basis of the statistical test.

The commenter further criticized EPA's application of the WOE determination on grounds that EPA ignores evidence indicating that continued nonattainment is likely, such as, according to the commenter, monitoring data indicating that ozone levels in many cities during 1999 continue to exceed the NAAQS by margins as wide or wider than those predicted by the UAM. EPA has reviewed the evidence provided by the commenter. The 1999 monitor values do not constitute substantial evidence indicating that the SIPs will not provide for attainment. These values do not reflect either the local or regional control programs which are scheduled for implementation in the next several years. Once implemented, these controls are expected to lower emissions and thereby lower ozone values. Moreover, there is little evidence to support the statement that ozone levels in many cities during 1999 continue to exceed the NAAQS by margins as wide or wider than those predicted by the UAM. Since areas did not model 1999 ozone levels using 1999 meteorology and 1999 emissions which reflect reductions anticipated by control measures, that are or will be approved into the SIP, there is no way to determine how the UAM predictions for 1999 compare to the 1999 air quality. Therefore, we can not determine whether or not the monitor values exceed the NAAQS by a wider margin than the UAM predictions for 1999. In summary, there is little evidence to support the conclusion that high exceedances in 1999 will continue to occur after adopted control measures are implemented.

In addition, the commenter argued that in applying the WOE determinations, EPA ignored factors showing that the SIPs under-predict future emissions, and the commenter included as examples certain mobile source emissions sub-inventories. EPA did not ignore possible under-prediction in mobile emissions. EPA is presently evaluating mobile source emissions data as part of an effort to update the computer model for estimating mobile source emissions. EPA is considering various changes to the model, and is not prepared to conclude at this time that the net effect of all these various changes would be to increase or decrease emissions estimates. For attainment demonstration SIPs that rely on the Tier 2/Low Sulfur program for attainment or otherwise (i.e., reflect these programs in their motor vehicle emissions budgets), states have committed to revise their motor vehicle emissions budgets after the MOBILE6 model is released. EPA will work with states on a case-by-case basis if the new emission estimates raise issues about the sufficiency of the attainment demonstration. If analysis indicates additional measures are needed, EPA will take the appropriate action.

B. Reliance on the NO_X SIP Call and Tier 2

Comment: Several commenters stated that given the uncertainty surrounding the NO_X SIP Call at the time of EPA's proposals on the attainment demonstrations, there is no basis for the conclusion reached by EPA that states should assume implementation of the NO_X SIP Call, or rely on it as a part of their demonstrations. One commenter claims that there were errors in the emissions inventories used for the NO_X SIP Call Supplemental Notice (SNPR) and that these inaccuracies were carried over to the modeling analyses, estimates of air quality based on that modeling, and estimates of EPA's Tier 2 tailpipe emissions reduction program not modeled in the demonstrations. Thus, because of the inaccuracies in the inventories used for the NO_X SIP Call, the attainment demonstration modeling is also flawed. Finally, one commenter suggests that modeling data demonstrates that the benefits of imposing NO_X SIP Call controls are limited to areas near the sources controlled.

Response: These comments were submitted prior to several court decisions largely upholding EPA's NO_X SIP Call. *Michigan* v. *EPA,* 213 F.3d 663 (D.C. Cir. 2000), *cert. denied,* _U.S._, 121 S. Ct. 1225, 149 L.Ed. 135 (2001); *Appalachian Power* v. *EPA,* 251 F.3d 1026 (D.C. Cir. 2001) . In those cases, the court largely upheld the NO_X SIP Call. Although a few issues were vacated or remanded to EPA for further consideration, these issues do not concern the accuracy of the emission inventories relied on for purposes of the NO_X SIP Call. Moreover, contrary to the commenter's suggestion, the NO_X SIP Call modeling data bases were not used to develop estimates of reductions from the Tier 2 program for the severe-area one-hour attainment demonstrations. Accordingly, the commenter's concerns that inaccurate inventories for the NO_X SIP Call modeling lead to inaccurate results for the severe-area one-hour attainment demonstrations are inapposite.

The remanded issues do affect the ability of EPA and the states to achieve the full level of the SIP Call reductions by May 2003. First, the court vacated the rule as it applied to two states—Missouri and Georgia—and also remanded the definition of a co-generator and the assumed emission limit for internal combustion engines. EPA has informed the states that until EPA addresses the remanded issues, EPA will accept SIPs that do not include those small portions of the emission budget. However, EPA is planning to propose a rule shortly to address the remanded issues and ensure that emission reductions from these states and the emission reductions represented by the two source categories are addressed in time to benefit the severe nonattainment areas. Also, although the court in the *Michigan* case subsequently issued an order delaying the implementation date to no later than May 31, 2004, and the *Appalachian Power* case remanded an issue concerning computation of the electric generating units (EGU) growth factor, it is EPA's view that states should assume that the SIP Call reductions will occur in time to ensure attainment in the severe nonattainment areas. Both EPA and the states are moving forward to implement the NO_X SIP Call.

Finally, contrary to the commenter's conclusions, EPA's modeling to determine the region-wide impacts of the NO_X SIP Call clearly shows that regional transport of ozone and its precursors is impacting nonattainment areas several states away. This analysis was upheld by the court in *Michigan.*

C. Approval of Demonstrations That Rely on State Commitments or State Rules for Emission Limitations to Lower Emissions in the Future Not Yet Adopted by a State and/or Approved By EPA

Comment: Several commenters disagreed with EPA's proposal to approve states' attainment demonstrations because: (a) Not all of the emissions reductions assumed in the demonstrations have actually taken place, (b) are reflected in rules yet to be adopted and approved by a state and approved by EPA as part of the SIP, (c) are credited illegally as part of a demonstration because they are not approved by EPA as part of the SIP, or (d) the commenter maintains that EPA does not have authority to accept enforceable state commitments to adopt measures in the future in lieu of current adopted measures to fill a near-term shortfall of reductions.

Response: EPA disagrees with the comments, and believes—consistent with past practice—that the CAA allows approval of enforceable commitments that are limited in scope where circumstances exist that warrant the use of such commitments in place of adopted measures.[6] Once EPA determines that circumstances warrant consideration of an enforceable commitment, EPA believes that three factors should be considered in determining whether to approve the enforceable commitment: (1) Whether the commitment addresses a limited portion of the statutorily-required program; (2) whether the state is capable of fulfilling its commitment; and (3) whether the commitment is for a reasonable and appropriate period of time.

As an initial matter, EPA believes that present circumstances for the New York City, Philadelphia, Baltimore and Houston nonattainment areas warrant the consideration of enforceable commitments. The Northeast states that make up the New York, Philadelphia and Baltimore nonattainment areas submitted SIPs that they reasonably believed demonstrated attainment with fully adopted measures. After EPA's initial review of the plans, EPA recommended to these areas that additional controls would be necessary to ensure attainment. Because these areas had already submitted plans with many fully adopted rules and the adoption of additional rules would take some time, EPA believed it was appropriate to allow these areas to supplement their plans with enforceable commitments to adopt and submit control measures to achieve the additional necessary reductions. For Maryland's attainment demonstration for the Philadelphia area, EPA has determined that the submission of enforceable commitments in place of adopted control measures for this limited set of reductions will not interfere with the area's ability to meet its 2005 attainment obligations.

EPA's approach here of considering enforceable commitments that are limited in scope is not new. EPA has historically recognized that under certain circumstances, issuing full approval may be appropriate for a submission that consists, in part, of an enforceable commitment. *See, e.g.,* 62 FR 1150, 1187, January 8, 1997 (ozone attainment demonstration for the South Coast Air Basin); 65 FR 18903, April 10, 2000 (revisions to attainment

[6] These commitments are enforceable by the EPA and citizens under, respectively, sections 113 and 304 of the CAA. In the past, EPA has approved enforceable commitments and courts have enforced these actions against states that failed to comply with those commitments. *See, e.g., American Lung Ass'n of N.J.* v. *Kean,* 670 F. Supp.1285 (D.N.J. 1987), *aff'd,* 871 F.2d 319 (3rd Cir. 1989); *NRDC, Inc.* v. *N.Y. State Dept. of Env. Cons.,* 668 F. Supp. 848 (S.D.N.Y.1987); *Citizens for a Better Env't* v. *Deukmejian,* 731 F. Supp. 1448, *recon. granted in part,* 746 F. Supp. 976 (N.D. Cal. 1990); *Coalition for Clean Air* v. *South Coast Air Quality Mgt. Dist.,* No. CV 97—6916—HLH, (C.D. Cal. Aug. 27, 1999). Further, if a state fails to meet its commitments, EPA could make a finding of failure to implement the SIP under section 179(a) of the Act, which starts an 18-month period for the State to begin implementation before mandatory sanctions are imposed.

demonstration for the South Coast Air Basin); 63 FR 41326, August 3, 1998 (federal implementation plan for PM–10 for Phoenix); (48 FR 51472, state implementation plan for New Jersey). Nothing in the Act speaks directly to the approvability of enforceable commitments.[7] However, EPA believes that its interpretation is consistent with provisions of the CAA. For example, section 110(a)(2)(A) provides that each SIP ''shall include enforceable emission limitations and other control measures, means or techniques . . . *as well as schedules and timetables for compliance,* as may be necessary or appropriate to meet the applicable requirement of the Act.'' (Emphasis added). Section 172(c)(6) of the Act requires, as a rule generally applicable to nonattainment SIPs, that the SIP ''include enforceable emission limitations and such other control measures, means or techniques . . . *as may be necessary or appropriate* to provide for attainment . . . by the applicable attainment date . . . '' (Emphasis added). The emphasized terms mean that enforceable emission limitations and other control measures do not necessarily need to generate reductions in the full amount needed to attain. Rather, the emissions limitations and other control measures may be supplemented with other SIP rules—for example, the enforceable commitments EPA is approving today—as long as the entire package of measures and rules provides for attainment.

As provided above, after concluding that the circumstances warrant consideration of an enforceable commitment—as they do for the Philadelphia area—EPA would consider three factors in determining whether to approve the submitted commitments. First, EPA believes that the commitments must be limited in scope. In 1994, in considering EPA's authority under section 110(k)(4) to conditionally approve unenforceable commitments, the Court of Appeals for the District of Columbia Circuit struck down an EPA policy that would allow States to submit (under limited circumstances) commitments for entire programs. *Natural Resources Defense Council* v. *EPA,* 22 F.3d 1125 (D.C. Cir. 1994). While EPA does not believe that case is directly applicable here, EPA agrees with the Court that other provisions in the Act contemplate that a SIP submission will consist of more than a mere commitment. *See NRDC,* 22 F.3d at 1134.

In the present circumstances, the commitments address only a small portion of the plan. For the Philadelphia area, Maryland's commitment addresses only 10.7 percent VOC and 0.7 percent NO_X of the emission reductions necessary to attain the standard. Please see Sections I.G. and I.H. of this document for a comprehensive description of all of the adopted control measures and other components of the Maryland attainment demonstration SIP's control strategy for the Philadelphia area.

As to the second factor, whether the State is capable of fulfilling the commitment, EPA considered the current or potential availability of measures capable of achieving the additional level of reductions represented by the commitment. For the New York, Philadelphia and Baltimore nonattainment areas, EPA believes that there are sufficient untapped sources of emission reductions that could achieve the minimal levels of additional reductions that the areas need. This is supported by the recent recommendation of the OTC regarding specific controls that could be adopted to achieve the level of reductions needed for each of these three nonattainment areas. Thus, EPA believes that the States will be able to find sources of reductions to meet the shortfall. The States that comprise the New York, Philadelphia and Baltimore nonattainment areas are making significant progress toward adopting the measures to fill the shortfall. The OTC has met and on March 28, 2001 recommended a set of control measures. Currently, the States are working through their adoption processes with respect to those, and in some cases other, control measures.

Although EPA has evidence that the State may not make the submission on or before the date to which it has committed, EPA believes that it is making sufficient progress to support approval of the commitment. The State of Maryland has indicated that it would adopt, submit and implement the measures within a time period fully consistent with the Philadelphia area attaining the standard by its 2005 attainment date.

The third factor, EPA has considered in determining to approve limited commitments for the Philadelphia area attainment demonstrations is whether the commitment is for a reasonable and appropriate period. EPA recognizes that both the Act and EPA have historically emphasized the need for submission of adopted control measures in order to ensure expeditious implementation and achievement of required emissions reductions. Thus, to the extent that other factors—such as the need to consider innovative control strategies—support the consideration of an enforceable commitment in place of adopted control measures, the commitment should provide for the adoption of the necessary control measures on an expeditious, yet practicable, schedule.

As provided above, for the New York, Baltimore and Philadelphia areas, EPA proposed that these areas have time to work within the framework of the OTC to develop, if appropriate, a regional control strategy to achieve the necessary reductions and then to adopt the controls on a state-by-state basis. In the proposed approval of the attainment demonstrations, EPA proposed that these areas would have approximately 22 months to complete the OTC and state-adoption processes—a fairly ambitious schedule—i.e., until October 31, 2001. As a starting point in suggesting this time frame for submission of the adopted controls, EPA first considered the CAA ''SIP Call'' provision of the CAA—section 110(k)(5)—which provides States with up to 18 months to submit a SIP after EPA requests a SIP revision. While EPA may have ended its inquiry there, and provided for the States to submit the measures within 18 months of its proposed approval of the attainment demonstrations, EPA further considered that these areas were all located with the Northeast Ozone Transport Region and determined that it was appropriate to provide these areas with additional time to work through the OTR process to determine if regional controls would be appropriate for addressing the shortfall. EPA believed that allowing these States until 2001 to adopt these additional measures would not undercut their attainment dates of November 2005 or 2007. EPA still believes that this a reasonable schedule for the states to submit adopted control measures that will achieve the additional necessary reductions

The enforceable commitments submitted by Maryland for the Philadelphia nonattainment area, in conjunction with the other SIP measures and other sources of emissions reductions, constitute the required demonstration of attainment. EPA believes that the delay in submittal of the final rules is permissible under section 110(k)(3) because the State has obligated itself to submit the rules by

[7] Section 110(k)(4) provides for ''conditional approval'' of commitments that need not be enforceable. Under that section, a State may commit to ''adopt specific enforceable measures'' within one-year of the conditional approval. Rather than enforcing such commitments against the State, the Act provides that the conditional approval will convert to a disapproval if ''the State fails to comply with such commitment.''

specified short-term dates, and that obligation is enforceable by EPA and the public. Moreover, as discussed in the December 16, 1999 proposal, its TSD, other rulemaking actions (cited herein) taken by EPA since December 16, 1999, and in this document; the SIP submittal approved today contains major substantive components submitted as adopted regulations and enforceable orders.

D. RACM (Including Transportation Control Measures)

Comment: Several commenters have stated that there is no evidence in several states that they have adopted reasonably available control measures (RACM) or that the SIPs have provided for attainment as expeditiously as practicable. Specifically, the lack of Transportation Control Measures (TCMs) was cited in several comments, but commenters also raised concerns about potential stationary source controls. One commenter stated that mobile source emission budgets in the plans are by definition inadequate because the SIPs do not demonstrate timely attainment or contain the emissions reductions required for all RACM. That commenter claims that EPA may not find adequate motor vehicle emission budget (MVEB) that is derived from a SIP that is inadequate for the purpose for which it is submitted. The commenter alleges that none of the MVEBs submitted by the states that EPA is considering for adequacy is consistent with the level of emissions achieved by implementation of all RACM; nor are they derived from SIPs that provide for attainment. Some commenters stated that for measures that are not adopted into the SIP, the states must provide a justification for why they were determined to not be RACM.

Response: EPA reviewed the initial SIP submittals for the Maryland portion of the Philadelphia area, namely Cecil County, and determined that they did not include sufficient documentation concerning available RACM measures. For all of the severe areas for which EPA proposed approval in December 1999, EPA consequently issued policy guidance memorandum to have these states address the RACM requirement through an additional SIP submittal. (Memorandum of December 14, 2000, from John S. Seitz, Director, Office of Air Quality Planning and Standards, re: ''Additional Submission on RACM from States with Severe One-Hour Ozone Nonattainment Area SIPs'').

On August 20, 2001, Maryland submitted its proposed analysis and determination that there are no additional reasonably available control measures (RACM) for the area and requested that EPA approve it as a SIP revision using a form of Federal rulemaking known as parallel-processing. On September 7, 2001 (66 FR 46758), EPA published a SNPR proposing to approve this supplement to the SIP as meeting the RACM requirements. We received no comments on that September 7, 2001 SNPR.

That proposed approval was done under a procedure called parallel processing, whereby EPA proposes rulemaking action concurrently with the state's procedures for amending its SIP. If the final, adopted revision is substantially changed from the version EPA proposed to approve, and which was available for public review during EPA's comment period, EPA will evaluate those changes and may publish another supplemental notice of proposed rulemaking. If no substantial changes are made, EPA will publish a final rulemaking notice on the revision. The final rulemaking action by EPA will occur only after the SIP revision has been adopted by the state and submitted formally to EPA for incorporation into the SIP.

On August 31, 2001, the State of Maryland supplemented its original attainment demonstration SIP with a formal submittal of an analysis of RACM. EPA has determined that there are no changes between Maryland's formally submitted RACM analysis and the proposed version for which we proposed approval on September 7, 2001. Based upon this SIP supplement, EPA concluded that Maryland's attainment demonstration SIP for the Philadelphia area meets the requirement for adopting RACM. In this final rule, EPA is approving Maryland's 2005 attainment demonstration plan for the Philadelphia area including this RACM analysis.

Section 172(c)(1) of the Act requires SIPs to contain RACM and provides for areas to attain as expeditiously as practicable. EPA has previously provided guidance interpreting the requirements of 172(c)(1). See 57 FR 13498, 13560. In that guidance, EPA indicated its interpretation that potentially available measures that would not advance the attainment date for an area would not be considered RACM. EPA also indicated in that 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 their SIP submittals whether measures considered were reasonably available or not, and if measures are reasonably available they must be adopted as RACM. Finally, EPA indicated that states could reject measures as not being RACM because they would not advance the attainment date, would cause substantial widespread and long-term adverse impacts, would be economically or technologically infeasible, or would be unavailable based on local considerations, including costs. EPA also issued a recent memorandum re-confirming the principles in the earlier guidance, entitled, ''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. Web site: *www.epa.gov/ttn/oarpg/t1pgm.html.*

As stated previously, the analysis submitted by Maryland on August 31, 2001 as a supplement to its attainment demonstration SIP for the Philadelphia area, addresses the RACM requirement. Maryland has considered a variety of potential stationary/area source controls such as limits on area source categories not covered by a control technique guideline (e.g., motor vehicle refinishing, and surface/cleaning degreasing); rule effectiveness improvements; controls on major stationary sources of NO_X that are beyond that required under reasonably available control technology (RACT); and other potential measures. Maryland considered a variety of potential mobile source control measures such as alternative fuel vehicles; bicycle and pedestrian improvements; early retirement of older motor vehicles; land use and development changes; transit improvements; employer based programs; congestion pricing for low occupancy vehicles; traffic flow improvements; outreach and education; parking restrictions; market-based/economic incentive-based program; low emission vehicle standards; and other measures such as trip reduction ordinances, value pricing and highway ramp metering.

The State has implemented measures which went beyond the Federally mandated controls, which were found to be cost effective and technologically feasible. Maryland has adopted and submitted rules for the following categories of area sources which go beyond the Federally mandated controls. The State has implemented measures which went beyond the Federally mandated controls, which were found to be cost effective and technologically feasible. Maryland has

adopted and submitted rules for the following categories of area sources which go beyond the Federally mandated controls. The following are examples and not an exhaustive list:

(1) Maryland has adopted, and EPA has SIP approved, a rule for motor vehicle refinishing. The rule includes volatile organic compound (VOC) content limits for motor vehicle refinishing coatings, application standards and storage and house keeping work practices. This rule goes beyond the Federal rule in content limits, and sets application and work practices standards.

(2) Maryland has adopted, and EPA has approved, a rule for control of VOC emissions from screen printing on plywood used for signs, and untreated sign paper.

(3) Maryland has adopted, and EPA has SIP approved, a rule for control of VOC emissions from screen printing, lithographic printing, drying ovens, adhesive application, and laminating equipment used to produce a credit card or similar plastic card product.

(4) Maryland has adopted, and EPA has SIP approved, a rule for control of VOC emissions from ''digital imaging''—printers that use a computer driven machine to transfer an electronically stored image onto the substrate through the use of inks, toners, or other similar color graphic materials via ink jet, electrostatic, and spray jet technologies.

(5) Maryland has adopted, and EPA has SIP approved, a rule for control of VOC emissions from cold and vapor degreasing that includes requirements that go beyond the applicable CTG. Maryland restricts the vapor pressure of solvents used to 1 mm Hg at 20 C (0.019 psia) or less for and cold degreasing, including cold or vapor degreasing at: service stations; motor vehicle repair shops; automobile dealerships; machine shops; and any other metal refinishing, cleaning, repair, or fabrication facility.

(6) Maryland has adopted, and EPA has SIP approved, a rule for control of VOC and NO_X emissions by banning open burning activities from June 1 through August 31 of each year.

(7) Maryland has adopted, and EPA has SIP approved, a rule for control of VOC emissions from lithographic printing.

(8) Maryland has adopted, and EPA has SIP approved, a rule to implement Phase II NO_X controls under the OTC's MOU. This rule established a fixed cap on ozone-season NO_X emissions from specified major point sources of NO_X. The rule grants each source a fixed number of NO_X allowances, applies state-wide, and required compliance starting during the 2000 ozone season. It reduces NO_X emissions both inside and outside the Philadelphia area.

(9) Maryland has adopted, and EPA has SIP approved, a rule to implement the NO_X SIP Call. The Maryland rule requires compliance commencing with the start of the 2003 ozone season. (This measure is identified as Phase II/III control under the OTC MOU on NO_X control in the attainment demonstration).

(10) Maryland has also adopted, and EPA has SIP approved, a rule requiring the sale of vehicles under the national low-emission vehicle program (NLEV).

Maryland has considered a variety of potential mobile source control measures such as alternative fuel vehicles; bicycle and pedestrian improvements; early retirement of older motor vehicles; land use and development changes; transit improvements; employer based programs; congestion pricing for low occupancy vehicles; traffic flow improvements; outreach and education; parking restrictions; market-based/economic incentive-based program; and other measures such as trip reduction ordinances, value pricing and highway ramp metering. The Maryland portion of the Philadelphia area, Cecil County, has unique local characteristics that affect the effectiveness of many mobile source measures. The first is that the majority of the vehicle travel occurs on the Interstate 95 highway; much of this traffic is through traffic that would not be affected by locally adopted transportation control measures. Cecil County is a rural area without much of the mass transit infrastructure found in Maryland's other major nonattainment areas (Baltimore, Metropolitan Washington, DC). The area has few point sources of VOC emissions and no major sources of NO_X. Most of the area source VOC emissions are already subject to regulation. Maryland determined that many of the considered measures were not to be RACM due to the potential for substantial widespread and long-term adverse impacts, or for various reasons related to local conditions, such as economics or implementation concerns. A large number of the considered measures were rejected on these grounds or on the grounds that they could not be implemented by 2005 much less any earlier. Some were rejected because they would not advance attainment because the measure had benefits outside the ozone season or would be sporadically implemented (not episodically) such as the ''try transit week'' items. These explanations are provided in further detail in the docket for this rulemaking.

On September 7, 2001, EPA published an SNPR proposing to approve the RACM analysis submitted by Maryland on August 31, 2001 as a supplement to its 2005 attainment demonstration SIP for the Philadelphia area. We received no comments on that SNPR. In this final rule, EPA is approving Maryland's 2005 attainment demonstration plan for the Philadelphia area including this RACM analysis.

Although EPA does not believe that section 172(c)(1) requires implementation of additional measures for the Maryland portion of the Philadelphia area, this conclusion is not necessarily valid for other areas. Thus, a determination of RACM is necessary on a case-by-case basis and will depend on the circumstances for the individual area. In addition, if in the future EPA moves forward to implement another ozone standard, this RACM analysis would not control what is RACM for these or any other areas for that other ozone standard.

Also, EPA has long advocated that states consider the kinds of control measures that the commenters have suggested, and EPA has indeed provided guidance on those measures. *See, e.g., www.epa.gov/otaq/transp.htm.* In order to demonstrate that they will attain the one-hour ozone NAAQS as expeditiously as practicable, some areas may need to consider and adopt a number of measures—including the kind that the Maryland portion of the Philadelphia area, Cecil County itself evaluated in its RACM analysis—that even collectively do not result in many emission reductions. Furthermore, EPA encourages areas to implement technically available and economically feasible measures to achieve emissions reductions in the short term—even if such measures do not advance the attainment date—since such measures will likely improve air quality. Also, over time, emission control measures that may not be RACM now for an area may ultimately become feasible for the same area due to advances in control technology or more cost-effective implementation techniques. Thus, areas should continue to assess the state of control technology as they make progress toward attainment and consider new control technologies that may in fact result in more expeditious improvement in air quality.

Because EPA is finding that the SIP meets the Clean Air Act's requirement for RACM and that there are no additional reasonably available control measures that can advance the attainment date, EPA concludes that the attainment date being approved is as expeditious as practicable.

E. Adequacy of the Motor Vehicle Emissions Budgets

Comment 1: We received a number of comments about the process and substance of EPA's review of the adequacy of motor vehicle emissions budgets for transportation conformity purposes.

Response 1: EPA's adequacy process for these SIPs has been completed, and we have found the motor vehicle emissions budgets in all of these SIPs to be adequate. We have already responded to any comments related to adequacy when we issued our adequacy findings, and therefore we are not listing the individual comments or responding to them here. Our findings of adequacy and responses to comments can be accessed at *www.epa.gov/otaq/traq* (once there, click on the ''conformity'' button). At the Web site, EPA regional contacts are identified.

Comment 2: We received comments that assert that EPA cannot approve Maryland's motor vehicle emissions budgets because Maryland has not submitted the latest periodic inventory which the comments claim was due three years after June 30, 1997, and because there is no demonstration that Maryland is meeting rate of progress requirements.

Response 2: EPA believes the milestone compliance demonstration requirements of CAA section 182(g) and the periodic inventory requirements under section 182(a)(3)(A) each are independent requirements from the attainment demonstration requirements under CAA sections 172(c)(1) and 182(c)(2)(A). The periodic emissions inventory and milestone compliance demonstration requirements have no bearing on whether a state has submitted a SIP that projects attainment of the ozone NAAQS. EPA acknowledges that milestone compliance demonstration and periodic emission inventory requirements are an independently required action, but does not believe that these have any bearing on whether Maryland has submitted an approvable attainment demonstration SIP. EPA certainly expects that the periodic emissions inventory for 1999 would reflect the 1999 fleet data used in the final motor vehicle emissions budgets found in the final attainment demonstration SIP.

F. MOBILE6 and the Motor Vehicle Emissions Budgets (MVEBs)

Comment 1: One commenter generally supports a policy of requiring motor vehicle emissions budgets to be recalculated when revised MOBILE models are released.

Response 1: The Phase II attainment demonstrations that rely on Tier 2 emission reduction credit contain commitments to revise the motor vehicle emissions budgets after MOBILE6 is released.

Comment 2: The revised budgets calculated using MOBILE6 will likely be submitted after the MOBILE5 budgets have already been approved. EPA's policy is that submitted SIPs may not replace approved SIPs.

Response 2: This is the reason that EPA proposed in the July 28, 2000, SNPR (65 FR 46383) that the approval of the MOBILE5 budgets for conformity purposes would last only until MOBILE6 budgets had been submitted and found adequate. In this way, the MOBILE6 budgets can apply for conformity purposes as soon as they are found adequate.

Comment 3: If a State submits additional control measures that affect the motor vehicle emissions budget, but does not submit a revised motor vehicle emissions budget, EPA should not approve the attainment demonstration.

Response 3: EPA agrees. The motor vehicle emissions budgets in Maryland's 2005 attainment demonstration SIP for the Philadelphia area reflect the motor vehicle control measures in the attainment demonstration. In addition, Maryland has committed to submit new budgets as a revision to the attainment SIP consistent with any new measures submitted to fill any shortfall, if the additional control measures affect on-road motor vehicle emissions.

Comment 4: EPA should make it clear that the motor vehicle emissions budgets to be used for conformity purposes will be determined from the total motor vehicle emissions reductions required in the SIP, even if the SIP does not explicitly quantify a revised motor vehicle emissions budget.

Response 4: EPA will not approve SIPs without motor vehicle emissions budgets that are explicitly quantified for conformity purposes. The Maryland attainment demonstration for the Philadelphia area contains explicitly quantified motor vehicle emissions budgets.

Comment 5: If a state fails to follow through on its commitment to submit the revised motor vehicle emissions budgets using MOBILE6, EPA could make a finding of failure to submit a portion of a SIP, which would trigger a sanctions clock under section 179.

Response 5: If a state fails to meet its commitment, EPA could make a finding of failure to implement the SIP, which would start a sanctions clock under section 179 of the Clean Air Act.

Comment 6: If the budgets recalculated using MOBILE6 are larger than the MOBILE5 budgets, then attainment should be demonstrated again.

Response 6: As EPA proposed in its December 16, 1999 notices, we will work with States on a case-by-case basis if the new emissions estimates raise issues about the sufficiency of the attainment demonstration.

Comment 7: If the MOBILE6 budgets are smaller than the MOBILE5 budgets, the difference between the budgets should not be available for reallocation to other sources unless air quality data show that the area is attaining, and a revised attainment demonstration is submitted that demonstrates that the increased emissions are consistent with attainment and maintenance. Similarly, the MOBILE5 budgets should not be retained (while MOBILE6 is being used for conformity demonstrations) unless the above conditions are met.

Response 7: EPA agrees that if recalculation using MOBILE6 shows lower motor vehicle emissions than MOBILE5, then these motor vehicle emission reductions cannot be reallocated to other sources or assigned to the motor vehicle emissions budget as a safety margin unless the area reassesses the analysis in its attainment demonstration and shows that it will still attain. In other words, the area must assess how its original attainment demonstration is impacted by using MOBILE6 versus MOBILE5 before it reallocates any apparent motor vehicle emission reductions resulting from the use of MOBILE6. In addition, Maryland will be submitting new budgets based on MOBILE6, so the MOBILE5 budgets will not be retained in the SIP indefinitely.

G. MOBILE6 Grace Period

Comment 1: We received a comment on whether the grace period before MOBILE6 is required in conformity determinations will be consistent with the schedules for revising SIP motor vehicle emissions budgets within 1 or 2 years of MOBILE6's release.

Response 1: This comment is not germane to this rulemaking, since the MOBILE6 grace period for conformity determinations is not explicitly tied to EPA's SIP policy and approvals. However, EPA understands that a longer grace period would allow some areas to better transition to new MOBILE6 budgets. EPA is considering the maximum two-year grace period allowed by the conformity rule, and EPA will address this in the future when the final MOBILE6 emissions model and policy guidance is released.

Comment 2: One commenter asked EPA to clarify in the final rule whether MOBILE6 will be required for conformity determinations once new MOBILE6 budgets are submitted and found adequate.

Response 2: This comment is not germane to this rulemaking. However, it is important to note that EPA intends to clarify its policy for implementing MOBILE6 in conformity determinations when the final MOBILE6 model is released. EPA believes that MOBILE6 should be used in conformity determinations once new MOBILE6 budgets are found adequate.

H. Two-Year Option To Revise the MVEBs

Comment: One commenter did not prefer the additional option for a second year before the state has to revise the conformity budgets with MOBILE6, since new conformity determinations and new transportation projects could be delayed in the second year.

Response: EPA proposed the additional option to provide further flexibility in managing MOBILE6 budget revisions. The supplemental proposal did not change the original option to revise budgets within one year of MOBILE6's release. State and local governments can continue to use the one-year option, if desired, or submit a new commitment consistent with the alternative two-year option. EPA expects that state and local agencies have consulted on which option is appropriate and have considered the impact on future conformity determinations. Maryland has committed to revise its budgets within one year of MOBILE6's release.

I. Motor Vehicle Emissions Inventory

Comment: Several commenters stated that the motor vehicle emissions inventory is not current, particularly with respect to the fleet mix. Commenters stated that the fleet mix does not accurately reflect the growing proportion of sport utility vehicles and gasoline trucks, which pollute more than conventional cars. Also, a commenter stated that EPA and states have not followed a consistent practice in updating SIP modeling to account for changes in vehicle fleets. For these reasons, commenters recommend disapproving the SIPs.

Response: All of the SIPs on which we are taking final action are based on the most recent vehicle registration data available at the time the SIP was submitted. The SIPs use the same vehicle fleet characteristics that were used in the most recent periodic inventory update. Maryland used 1999 vehicle registration data in the final motor vehicle emissions budgets found in its attainment demonstration SIP for the Philadelphia area. EPA requires the most recent available data to be used, but we do not require it to be updated on a specific schedule. Therefore, different SIPs base their fleet mix on different years of data. Our guidance does not suggest that SIPs should be disapproved on this basis. Nevertheless, we do expect that revisions to these SIPs that are submitted using MOBILE6 (as required in those cases where the SIP is relying on emissions reductions from the Tier 2 standards) will use updated vehicle registration data appropriate for use with MOBILE6, whether it is updated local data or the updated national default data that will be part of MOBILE6.

J. VOC Emission Reductions

Comment: For States that need additional VOC reductions, one commenter recommends a process to achieve these VOC emission reductions, which involves the use of HFC–152a (1,1 difluoroethane) as the blowing agent in manufacturing of polystyrene foam products such as food trays and egg cartons. The commenter states that HFC–152a could be used instead of hydrocarbons, a known pollutant, as a blowing agent. Use of HFC–152a, which is classified as VOC exempt, would eliminate nationwide the entire 25,000 tons/year of VOC emissions from this industry.

Response: EPA has met with the commenter and has discussed the technology described by the company to reduce VOC emissions from polystyrene foam blowing through the use of HFC–152a (1,1 difluoroethane), which is a VOC exempt compound, as a blowing agent. Since the HFC–152a is VOC exempt, its use would give a VOC reduction compared to the use of VOCs such a pentane or butane as a blowing agent. However, EPA has not studied this technology exhaustively. It is each State's prerogative to specify which measures it will adopt in order to achieve the additional VOC reductions it needs. In evaluating the use of HFC–152a, States may want to consider claims that products made with this blowing agent are comparable in quality to products made with other blowing agents. Also the question of the over-all long term environmental effect of encouraging emissions of fluorine compounds would be relevant to consider. This is a technology which States may want to consider, but ultimately, the decision of whether to require this particular technology to achieve the necessary VOC emissions reductions must be made by each affected State. Finally, EPA notes that under the significant new alternatives policy (SNAP) program, created under CAA section 612, EPA has identified acceptable foam blowing agents man of which are not VOCs (*www.epa.gov/ozone/title6/snap/*).

K. Credit for Measures Not Fully Implemented

Comment: States should not be given credit for measures that are not fully implemented. For example, the States are being given full credit for Federal coating, refinishing and consumer product rules that have been delayed or weakened.

Response: Architectural and Industrial Maintenance (AIM) Coatings: On March 22, 1995 EPA issued a memorandum [8] that provided that States could claim a 20 percent reduction in VOC emissions from the AIM coatings category in ROP and attainment plans based on the anticipated promulgation of a national AIM coatings rule. In developing the attainment and ROP SIPs for their nonattainment areas, States relied on this memorandum to estimate emission reductions from the anticipated national AIM rule. EPA promulgated the final AIM rule in September 1998, codified at 40 CFR part 59 subpart D. In the preamble to EPA's final AIM coatings regulation, EPA estimated that the regulation will result in 20 percent reduction of nationwide VOC emissions from AIM coatings categories (63 FR 48855). The estimated VOC reductions from the final AIM rule resulted in the same level as those estimated in the March 1995 EPA policy memorandum.

In accordance with EPA's final regulation, States have assumed a 20 percent reduction from AIM coatings source categories in their attainment and ROP plans. AIM coatings manufacturers were required to be in compliance with the final regulation within one year of promulgation, except for certain pesticide formulations which were given an additional year to comply. Thus all manufacturers were required to comply, at the latest, by September 2000. Industry confirmed in comments on the proposed AIM rule that 12 months between the issuance of the final rule and the compliance deadline would be sufficient to ''use up existing label stock'' and ''adjust inventories'' to conform to the rule. (63

[8] ''Credit for the 15 Percent Rate-of-Progress Plans for Reductions from the Architectural and Industrial Maintenance (AIM) Coating Rules,'' March 22, 1995, from John S. Seitz, Director, Office of Air Quality Planning and Standards to Air Division Directors, Regions I–X.

FR 48848, September 11, 1998). In addition, EPA determined that, after the compliance date, the volume of nonconforming products would be very low (less than one percent) and would be withdrawn from retail shelves anyway. Therefore, EPA believes that compliant coatings were in use by the Fall of 1999 with full reductions to be achieved by September 2000 and that it was appropriate for the States to take credit for a 20 percent emission reduction in their SIPs.

Autobody Refinish Coatings Rule: Consistent with a November 27, 1994 EPA policy [9], many States claimed a 37 percent reduction from this source category based on a proposed rule.

However, EPA's final rule, ''National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings,'' published on September 11, 1998 (63 FR 48806), did not regulate lacquer topcoats and will result in a smaller emission reduction of around 33 percent overall nationwide. The 37 percent emission reduction from EPA's proposed rule was an estimate of the total nationwide emission reduction. Since this number is an overall national average, the actual reduction achieved in any particular area could vary depending on the level of control which already existed in the area. For example, in California the reduction from the national rule is zero because California's rules are more stringent than the national rule. In the proposed rule, the estimated percentage reduction for areas that were unregulated before the national rule was about 40 percent. However as a result of the lacquer topcoat exemption added between proposal and final rule, the reduction is now estimated to be 36 percent for previously unregulated areas. Thus, most previously unregulated areas will need to make up the approximately 1 percent difference between the 37 percent estimate of reductions assumed by States, following EPA guidance based on the proposal, and the 36 percent reduction actually achieved by the final rule for previously unregulated areas. EPA's best estimate of the reduction potential of the final rule was spelled out in a September 19, 1996 memorandum entitled ''Emissions Calculations for the Automobile Refinish Coatings Final Rule'' from Mark Morris to Docket No. A–95–18.

Consumer Products Rule: Consistent with a June 22, 1995 EPA guidance [10], States claimed a 20 percent reduction from this source category based on EPA's proposed rule. The final rule, ''National Volatile Organic Compound Emission Standards for Consumer Products,'' (63 FR 48819), published on September 11, 1998, has resulted in a 20 percent reduction after the December 10, 1998 compliance date. Moreover, these reductions largely occurred by the Fall of 1999. In the consumer products rule, EPA determined and the consumer products industry concurred, that a significant proportion of subject products have been reformulated in response to State regulations and in anticipation of the final rule (63 FR 48819). That is, industry reformulated the products covered by the consumer products rule in advance of the final rule. Therefore, EPA believes that complying products in accordance with the rule were in use by the Fall of 1999. It was appropriate for the States to take credit for a 20 percent emission reduction for the consumer products rule in their SIPs.

L. Enforcement of Control Programs

Comment: The attainment demonstrations do not clearly set out programs for enforcement of the various control strategies relied on for emission reduction credit.

Response: In general, state enforcement, personnel and funding program elements are contained in SIP revisions previously approved by EPA under obligations set forth in section 110(a)(2)(c) of the Clean Air Act. Once approved by EPA, there is no need for states to re-adopt and resubmit these programs with each and every SIP revision generally required by other sections of the Act. Maryland had previously received approval of their section 110(a)(2) SIPs. In a final rulemaking action published on March 8, 1984 (49 FR 8610), EPA approved Maryland's financial and manpower resource commitments, after having proposed approval of these commitments on February 3, 1983 (48 FR 5048, 5052). In addition, emission control regulations will also contain specific enforcement mechanisms, such as record keeping and reporting requirements, and may also provide for periodic state inspections and reviews of the affected sources. EPA's review of these regulations includes review of the enforceability of the regulations. Rules that are not enforceable are generally not approved by EPA. To the extent that the ozone attainment demonstration and ROP plan depend on specific state emission control regulations these individual regulations have undergone review by EPA in past approval actions.

M. Maryland's NO_X Measures Are Not Approved

Comment: We received comments that objected to crediting the attainment plan with reductions from measures not approved into the SIP. The comments specifically mentioned the NO_X RACT rule and the Phase II NO_X controls under the OTC MOU. We also received comments on these programs which stated that the applicability of the NO_X RACT requirement should extend down to sources with emissions of 25 tons per year or more.

Response: These comments are no longer germane to Maryland's attainment plan for the Philadelphia area. On, February 8, 2001, EPA fully approved Maryland's NO_X RACT rule (66 FR 9522). On December 15, 2000, EPA fully approved Maryland's rule that implements the Phase II controls under the OTC MOU to control NO_X (65 FR 78416). The comment regarding extending the applicability of RACT down to 25 ton per year sources is moot because the applicability threshold for NO_X RACT in Maryland's SIP-approved rule for the Philadelphia severe nonattainment area is 25 tons per year or more as required by the Act.

N. Attainment and Post-1999 Rate of Progress Demonstrations

Comment: One commenter claims that the plans fail to demonstrate emission reductions of 3 percent per year over each 3-year period between November 1999 and November 2002; and November 2002 and November 2005; and the 2-year period between November 2005 and November 2007, as required by 42 U.S.C. section 7511a(c)(2)(B). The states have not even attempted to demonstrate compliance with these requirements, and EPA has not proposed to find that they have been met. EPA has absolutely no authority to waive the statutory mandate for 3 percent annual reductions. The statute does not allow EPA to use the NO_X SIP call or 126 orders as an excuse for waiving rate-of-progress (ROP) deadlines. The statutory ROP requirement is for emission reductions—not ambient reductions. Emission reductions in upwind states do not waive the statutory requirement for 3 percent annual emission reductions within the downwind nonattainment area.

[9] ''Credit for the 15 Percent Rate-of-Progress Plans for Reductions from the Architectural and Industrial Maintenance (AIM) Coating Rule and the Autobody Refinishing Rule,'' November 29, 1994, John S. Seitz, Director OAQPS, to Air Division Directors, Regions I–X.

[10] ''Regulatory Schedule for Consumer and Commercial Products under Section 183(e) of the Clean Air Act,'' June 22, 1995, John S. Seitz, Director OAQPS, to Air Division Directors, Regions I–X.

Response: Under no condition is EPA waiving the statutory requirement for 3 percent annual emission reductions. For many areas, EPA did not propose approval of the post-99 ROP demonstrations at the same time as EPA proposed action on the area's attainment demonstration. On July 13, 2001 (66 FR 36717), EPA published a NPR for the State of Maryland. The NPR proposed approval of the post 1996 ROP plans for milestone years 1999, 2002 and 2005 for the Cecil County portion of the Philadelphia ozone nonattainment area submitted by the State of Maryland on December 24, 1997, as revised on April 24, 1998, August 18, 1998, December 21, 1999 and December 28, 2000. We received no comments on that NPR. EPA has approved Maryland's Post 1996 ROP plans for this area for all years after 1996 through the attainment year of 2005. See 66 FR 48209, September 19, 2001.

As provided in EPA's final action on the Maryland's ROP plan (66 FR 48209), the state is relying on emission reductions achieved in its portion of the Philadelphia area from fully promulgated Federal and fully adopted, SIP-approved NO_X and VOC measures for meeting the ROP requirement.

O. Specific Point Source Measures

Comment 1: We received comments in response to the December 16, 1999 NPR that asserted NO_X emission reduction estimates claimed by Maryland are unreliable for Maryland's Phase II and Phase III control under the OTC NO_X MOU. The comments note that in February 1999, a Maryland Court remanded the implementation schedule in Maryland's regulation and thus claim without definitive emission reduction schedules from one of the largest NO_X producing utilities in the state, the SIP reduction estimates are unreliable.

Response 1: Regarding the Phase II reductions under the OTC NO_X MOU, Maryland has reached settlement agreements with the pertinent utilities. The settlements indicate that the estimated NO_X reductions projected for the years 2002 and 2005 will not be affected. Maryland has provided copies of those agreements to EPA. EPA fully approved the Maryland NO_X Budget Rule to implement the Phase II controls as a SIP revision. See 65 FR 78416, December 15, 2000. This approval includes these agreements. By the ozone season of the year 2002, under the terms of those settlement agreements, both utilities are required to be in compliance with the Maryland's NO_X Budget Program under all circumstances.

Regarding the Phase III reductions, EPA disagrees with the comments because the comments were based upon a Maryland rule has been superceded by a SIP approved rule that applies to all years after 2003 and that contains none of the alleged defects identified in the comments. On January 10, 2001, EPA approved Maryland's SIP to address EPA's NO_X SIP Call rule into the Maryland SIP (66 FR 1866). This rule requires reductions of NO_X from major stationary sources equivalent to EPA's NO_X SIP Call regulation and requires sources to achieve compliance with the final seasonal NO_X allocations commencing with the 2003 ozone season. This rule contains no provisions which allow sources to avoid compliance in the event that the NO_X allowance market fails to materialize or if the price of these allowances is unreasonable. EPA has determined that this rule substantively provides for the NO_X reductions that Maryland modeled in their local scale modeling submitted to EPA in support of Maryland's attainment demonstration for the Philadelphia Area.

Comment 2: We received comments asserting that on December 17, 1999, EPA granted section 126 petitions filed by four states to reduce ozone through reductions in NO_X emissions from other states, and that under those petitions, fifteen (15) facilities located in Maryland will have to reduce NO_X emissions by a total of 19,466 tons by May 1, 2003. The comments express concerns about the accountability of these reductions as compared to those assumed in the attainment demonstration. The comments assert that EPA's decision on the 126 petitions will clearly change state and Ozone Transport Group implementation schedules and should be addressed by the state prior to SIP approval.

Response 2: As noted in the December 16, 1999 proposal, Maryland's attainment demonstration plan assumed NO_X reductions consistent with those called for by EPA's NO_X SIP Call. In consideration of recent court decisions on the NO_X SIP Call described in this document and as explained in EPA's response to comments on ''Reliance on NO_X SIP Call and Tier 2 Modeling,'' EPA believes it is appropriate to allow states to continue to assume the reductions from the NO_X SIP Call. The fact that EPA has granted section 126 petitions does not remove the obligations of states subject to the NO_X SIP Call to reduce NO_X emissions as called for in that rule. Furthermore, implementation of either the section 126 rules (described in this document) or the NO_X SIP Call achieves emission reductions prior to the applicable attainment deadline, 2005. Under recent rulings by the U.S. Court of Appeals for the District of Columbia Circuit both the 126 rule and the NO_X SIP Call must be implemented early in the ozone season in 2004. Therefore, EPA does not agree that there is a need for the states to address its implementation schedule in light of the section 126 petition action.

On August 14–15, 1997, we received petitions submitted individually by eight Northeastern states under section 126 of the CAA. Each petition requested us to make a finding that sources in certain categories of stationary sources in upwind states emit or would emit NO_X in violation of the prohibition in section 110(a)(2)(D)(i) on emissions that contribute significantly to nonattainment, or interfere with maintenance, in the petitioning states. On May 25, 1999, we promulgated a final rule (May 1999 Rule) determining that portions of the petitions are approvable under the one-hour and/or eight-hour ozone NAAQS based on their technical merit (64 FR 28250). Based on the affirmative technical determinations for the one-hour ozone NAAQS made in the May 1999 Rule, we promulgated a final rule on January 18, 2000 (January 2000 Rule) making section 126 findings that a number of large electric generating units (EGUs) and large industrial boilers and turbines named in the petitions emit in violation of the CAA prohibition against significantly contributing to nonattainment or maintenance problems in the petitioning states (65 FR 2674). In the January 2000 Rule, we also finalized the Federal NO_X Budget Trading Program as the control remedy for sources affected by the rule. This requirement replaces the default remedy in the May 1999 Rule. The January 2000 Rule establishes Federal NO_X emissions limits that sources must meet through a cap-and-trade program by May 1, 2003. The January 2000 rule affects sources located in the District of Columbia, Delaware, Maryland, North Carolina, New Jersey, Ohio, Pennsylvania, Virginia, West Virginia, and parts of Indiana, Kentucky, Michigan, and New York. All of the affected sources are located in states that are subject to the NO_X SIP Call.

On October 27, 1998 (63 FR 57356), EPA promulgated the ''Finding of Significant Contribution and Rulemaking for Certain s in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone,'' commonly referred to as the NO_X SIP Call. On March 3, 2000, the D.C. Circuit issued its decision on the NO_X SIP Call

regarding the one-hour ozone NAAQS ruling in favor of EPA on all the major issues. *Michigan* v. *EPA, supra.* On June 22, 2000, the Court ordered that we allow the states and the District of Columbia 128 days from June 22, 2000 to submit their SIPs. Accordingly, 19 states and the District of Columbia were required to submit SIPs in response to the NO_X SIP Call by October 30, 2000.[11] On August 30, 2000, the D.C. Circuit ordered that the June 22, 2000 Order be amended to extend the deadline for implementation of the NO_X SIP Call from May 1, 2003 to May 31, 2004. In a separate rulemaking, we are addressing the Court's remand of the definition of electricity generating units, the control level for large stationary internal combustion engines and the SIP submittal and compliance dates for these actions, which affect less than 10 percent of the total emission reductions called for by the NO_X SIP Call.

Furthermore, as noted above in response to the previous comment in this document, Maryland has a state regulation in place to implement the SIP Call requirements. This state rule is in the approved Maryland SIP and requires compliance commencing May 1, 2003.

Comment 3: We received comments in response to the December 16, 1999 NPR asserting that the NO_X Phase II/III emissions reduction estimates asserted by the Maryland Department of the Environment are unreliable because the NO_X trading rule may not work. The comments raise the following concerns: If a NO_X allowance market ''fails to materialize'' or if the price of these allowances is ''unreasonable'' the ''safe harbor provision'' will allow a utility to avoid purchasing credits. Without definitive emission reduction schedules from one of the largest NO_X producing utilities in the state, the SIP reduction estimates are unreliable, at best, and misleadingly optimistic at worst. There is no guarantee that the OTC NO_X Budget Program will function and achieve its emissions target. The price of allowances may be prohibitively high allowing Maryland sources to avoid purchasing credits.

Response 3: EPA disagrees with the comments and maintains that cap-and-trade programs are an effective remedy for achieving emissions reductions in a cost-effective manner. Under cap-and-trade programs, total emissions are limited at the regional level. Sources are then given individual emissions limits expressed in the form of allowances, i.e., tradable permits equal to one ton of NO_X. A source has the option of reducing its emissions to or beyond its initial allowance level or of reducing to less than its initial allocation level and purchasing allowances from another source. Regardless of the compliance strategy a source employs, the environmental integrity of the program and of the emissions reductions remain intact because the total number of allowances remains capped. Every allowance available on the allowance market represents a ton of NO_X another plant did not emit.

The Acid Rain Program is a similar cap-and-trade program which has been in effect since 1995. Each year since 1995, emissions have been reduced beyond the required level and sources have achieved 100 percent compliance. The experience of the Acid Rain Program has been that the larger, higher emitting units reduced the most because they had the most cost-effective reductions to make.

Regarding comments that the OTC NO_X Budget Program will fail to function and achieve its emissions target, EPA disagrees for the following reasons: In 1999, the initial year of the Phase II, the OTC NO_X Budget Program was a success. According to EPA's OTC NO_X compliance report, 99 percent of the sources achieved full compliance. Furthermore, sources in the OTC over controlled during the 1999 ozone season, reducing their emissions 20 percent beyond the required control level. These allowances may be traded on the allowances market in future years and used for compliance.

Moreover, a viable NO_X allowances market was created; during the 15 months between the onset of allowance trading and 1999 reconciliation (December 30, 1999), 138,790 allowances were transferred. Of these transactions, EPA estimated that nearly 40 percent of them (53,563) were transferred between non-affiliated parties. Over 28 percent of the allowances traded were future year allowances (2000–2002 vintage years) not available for compliance in 1999; another indication that the NO_X allowance market is strong.

EPA notes that the concerns about the price of allowances did not materialize. During the first year of the OTC NO_X Budget Program, there was significant price volatility. Before the start of the program allowance prices generally fluctuated between $1500 and $3000 and peaked at $7500/ton in February, 1999. However, once it became apparent that there would be more than enough allowances available for compliance in 1999, allowance prices dropped steadily. Since October 1999, the prices have been more or less steady at $600-$800 a ton. As the second control period begins, there is no indication that either allowance prices or price volatility are on the rise again.

P. Specific Area and Mobile Source Measures

Comment 1: We received comments asserting that Maryland appears to have relied upon an EPA memorandum dated November 28, 1994 when calculating emission reduction credits for control measures for nonroad small gasoline engines (NSGE). The comments state that because the NSGE Phase II rules were not published until 1998, the accuracy of the emissions reductions anticipated in the 1994 guidance is questionable and that the memorandum upon which MDE appears to have relied suggests that states include a safety margin in their emission reduction estimates for NSGE. The comments conclude that there is no evidence in the SIP that MDE incorporated a safety margin into the reductions.

Response 1: The State of Maryland acted consistent with guidance provided by EPA. However, in a December 28, 2000 revision, Maryland updated its attainment demonstration and ROP plans to include the benefits expected to accrue from the final Federal rules and thus is no longer relying on the guidance cited by the comments when determining the benefits for the Federal NSGE rule. (The cited guidance does provide guidance based upon final rules for one category of nonroad sources.)

Comment 2: We received comments asserting that Maryland needs to produce up-to-date emissions reduction calculations for surface cleaning/degreasing and automobile refinishing. The comments claim that the MDE asserts that new state rules for these source categories will result in 70 percent and 45 percent reductions in VOC from degreasing and automobile refinishing products, respectively, and that these claims are not supported with reliable data and it is impossible for the public to evaluate the reliability of these predictions.

Response 2: The Maryland degreasing regulation went beyond the draft-CTG requirements (which are estimated to be around 60 percent reduction) and so should generate deeper reductions when compared to reductions anticipated from the CTG. EPA estimates the efficiency of the automobile refinishing national rule to be around 36 percent in areas which did not previously have a rule. Maryland's autobody reductions are based upon a state rule which has state limits and additional requirements such as application equipment requirements discussed in a previous

[11] October 30, 2000 is the first business day following the expiration of the 128-day period.

response to a previous comment in Section II.K.

Q. Measures for the One-Hour NAAQS and for Progress Requirements Toward the Eight-Hour NAAQS

Comment: One commenter notes that EPA has been working toward promulgation of a revised eight-hour ozone National Ambient Air Quality Standard (NAAQS) because the Administrator deemed attaining the one-hour ozone NAAQS is not adequate to protect public health. Therefore, EPA must ensure that measures be implemented now that will be sufficient to meet the one-hour standard and that make as much progress toward implementing the eight-hour ozone standard as the requirements of the CAA and implementing regulations allow.

Response: The one-hour standard remains in effect for all of these areas and the SIPs that have been submitted are for the purpose of achieving that NAAQS. Congress has provided the States with the authority to choose the measures necessary to attain the NAAQS and EPA cannot second guess the states' choice if EPA determines that the SIP meets the requirements of the CAA. EPA believes that the SIPs for the severe areas meet the requirements for attainment demonstrations for the one-hour standard and thus, could not disapprove them even if EPA believed other control requirements might be more effective for attaining the eight-hour standard. However, EPA generally believes that emission controls implemented to attain the one-hour ozone standard will be beneficial towards attainment of the eight-hour ozone standard as well. This is particularly true regarding the implementation of NO_X emission controls resulting from EPA's NO_X SIP Call.

Finally, EPA notes that although the eight-hour ozone standard has been adopted by EPA, implementation of this standard has been delayed while certain aspects of the standard remain before the United States Circuit Court of Appeals. The states and EPA have yet to define the eight-hour ozone nonattainment areas and EPA has yet to issue guidance and requirements for the implementation of the eight-hour ozone standard.

III. Final Action

A. Attainment Demonstration

EPA is fully approving Maryland's attainment demonstration SIP revisions for the Philadelphia area, namely Cecil County, which was submitted on April 29, 1998, and revised on August 18, 1998, December 21, 1999, December 28, 2000, and August 31, 2001 including its analysis and determination of RACM.

B. Commitments

EPA is approving the enforceable commitments made to the Maryland's attainment plan for the Philadelphia severe ozone nonattainment area, which were submitted on December 28, 2000. The enforceable commitments are to:

(1) Submit measures by October 31, 2001 for additional emission reductions as required in the attainment demonstration test, and to revise the SIP and motor vehicle emissions budgets by October 31, 2001 if the additional measures affect the motor vehicle emissions inventory,

(2) Revise the SIP and motor vehicle emission budgets using MOBILE6 within one year after it is issued, and

(3) Perform a mid-course review by December 31, 2003.

C. Mobile Budgets of the Attainment Plan for the Philadelphia Area

EPA is approving the following mobile budgets of the Maryland's attainment plan for the Philadelphia area:

TRANSPORTATION CONFORMITY BUDGETS FOR THE MARYLAND PORTION OF THE PHILADELPHIA AREA

Control Strategy SIP	Year	VOC (TPD)	NO_X (TPD)	Date of adequacy determination
Attainment Demonstration	2005	2.6	5.6	April 27, 2001 (See 66 FR 18928, published on April 12, 2001).

We are only approving the attainment demonstration and its current budgets because Maryland has provided an enforceable commitment to revise the budgets using the MOBILE6 model within one year of EPA's release of that model. Therefore, we are limiting the duration of our approval of the current budgets only until such time as the revised budgets are found adequate. Those revised budgets will be more appropriate than the budgets we are approving for conformity purposes for the time being.

Similarly, EPA is only approving the 2005 attainment demonstration and its currents budgets because Maryland has provided an enforceable commitment to submit new budgets as a revision to the attainment SIP consistent with any new measures submitted to fill any shortfall, if the new additional control measures affect on-road motor vehicle emissions. Therefore, EPA is limiting the duration of its approval of the current budgets only until such time as any such revised budgets are found adequate. Those revised budgets will be more appropriate than the budgets EPA is approving for conformity purposes for the time being.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning regulations That significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely 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 tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the

distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action 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 ''Protection of Children from Environmental Health Risks and Safety Risks'' (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 states 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. 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. 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).

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 December 28, 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 to approve the ozone attainment demonstration SIP revision for the Philadelphia-Wilmington-Trenton area submitted by Maryland 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, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

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

Dated: October 15, 2001.

James W. Newsom,

Regional Administrator, Region III.

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 V—Maryland

2. Section 52.1076 is amended by revising the section heading and by adding paragraphs (h) and (i) to read as follows:

§ 52.1076 Control strategy plans for attainment and rate-of-progress: ozone.

* * * * *

(h) EPA approves the attainment demonstration for the Philadelphia area submitted as a revision to the State Implementation Plan by the Maryland Department of the Environment on April 29, 1998, August 18, 1998, December 21, 1999, December 28, 2000, and August 31, 2001 including its RACM analysis and determination. EPA is also approving the revised enforceable commitments made to the attainment plan for the Baltimore severe ozone nonattainment area which were submitted on December 28, 2000. The enforceable commitments are to submit measures by October 31, 2001 for additional emission reductions as required in the attainment demonstration test, and to revise the SIP and motor vehicle emissions budgets by October 31, 2001 if the additional measures affect the motor vehicle emissions inventory; to revise the SIP and motor vehicle emission budgets using MOBILE6 within one year after it is issued; and to perform a mid-course review by December 31, 2003.

(i) EPA approves the following mobile budgets of Maryland's attainment plan for the Philadelphia area:

TRANSPORTATION CONFORMITY BUDGETS FOR THE MARYLAND PORTION OF THE PHILADELPHIA AREA

Control Strategy SIP	Year	VOC (TPD)	NO_X (TPD)	Date of Adequacy Determination
Attainment Demonstration	2005	2.6	5.6	April 27, 2001 (See 66 FR 18928, published on April 12, 2001).

(1) We are only approving the attainment demonstration and its current budgets because Maryland has provided an enforceable commitment to revise the budgets using the MOBILE6 model within one year of EPA's release of that model. Therefore, we are limiting the duration of our approval of the current budgets only until such time as the revised budgets are found adequate. Those revised budgets will be more appropriate than the budgets we are approving for conformity purposes for the time being.

(2) Similarly, EPA is only approving the 2005 attainment demonstration and its currents budgets because Maryland has provided an enforceable commitment to submit new budgets as a revision to the attainment SIP consistent with any new measures submitted to fill any shortfall, if the new additional control measures affect on-road motor vehicle emissions. Therefore, EPA is limiting the duration of its approval of the current budgets only until such time as any such revised budgets are found adequate. Those revised budgets will be more appropriate than the budgets EPA is approving for conformity purposes for the time being.

[FR Doc. 01–26680 Filed 10–26–01; 8:45 am]

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Federal Register

Monday,

October 29, 2001

Part III

Environmental Protection Agency

40 CFR Part 52

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Post-1996 Rate-of-Progress Plans and One-Hour Ozone Attainment Demonstration for the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DE–1033; FRL–7089–3]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Post-1996 Rate-of-Progress Plans and One-Hour Ozone Attainment Demonstration for the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving the attainment demonstration for the one-hour ozone national ambient air quality standard (NAAQS) for the Philadelphia-Wilmington-Trenton severe nonattainment area (the Philadelphia area) as a revision to the Delaware State Implementation Plan (SIP). EPA is also approving the Post-1996 rate-of-progress (ROP) plans for the Delaware portion of the Philadelphia area, namely Kent and New Castle Counties. These control strategy plans were submitted by the Delaware Department of Natural Resources and Environmental Control (DNREC). The measures that have been adopted by the State which comprise the control strategies have and will result in significant emission reductions of volatile organic compounds (VOCs) and oxides of nitrogen (NO_X) in the Philadelphia area. Two counties in Delaware, one county in Maryland, seven counties in New Jersey, and five counties in Pennsylvania comprise the Philadelphia area. The intended effect of this action is to approve this SIP revision as meeting the requirements of the Clean Air Act (CAA or the Act).

DATES: This final rule is effective on November 28, 2001.

ADDRESSES: 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 Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182 at the EPA Region III office above or by e-mail at *quinto.rose@epa.gov.*

SUPPLEMENTARY INFORMATION: This **SUPPLEMENTARY INFORMATION** section is organized to address the following questions:

I. Background

A. What Action Is EPA Taking in This Final Rulemaking?

EPA is fully approving the Post-1996 ROP plans and the one-hour attainment demonstration submitted by Delaware for the Philadelphia area as meeting the requirements of 182(c)(2) and (d) of the Act. The following tables identify submittal dates and amendment dates for the Post-1996 ROP plans and the attainment demonstration.

TABLE 1.—SUBMITTAL DATES OF THE ATTAINMENT DEMONSTRATION PLAN

	Date	Summary of content
Initial submittal	May 22, 1998	Attainment Demonstration Plan.
Amendment	October 8, 1998	Attainment Demonstration Revised to Supplement Regional Scale Modeling.
Amendment	January 24, 2000	Attainment Plan Revised for Budgets to Reflect Tier 2/Sulfur Rule Benefits, and to Include Enforceable Commitments.
Amendment	December 20, 2000	Attainment Plan Revised to Amend Enforceable Commitments.
Amendment	October 9, 2001	Attainment Plan Revised to Include Reasonably Available Control Measures Analysis (RACM).

TABLE 2.—SUBMITTAL DATES OF THE POST-1996 ROP PLANS FOR KENT AND NEW CASTLE COUNTIES

	Date	Content
Initial submittal	December 29, 1997	ROP through 1999.
Amendment	June 17, 1999	ROP through 1999.
Initial submittal	February 3, 2000	ROP through 2002.
Amendment	December 20, 2000	ROP through 2002.
Initial submittal	December 20, 2000	ROP through 2005.

B. What Previous Action Has Been Proposed on These SIP Revisions?

In a December 16, 1999 (64 FR 70444) notice of proposed rulemaking (the December 16, 1999 NPR), we proposed approval of Delaware's attainment demonstration for the Philadelphia area.

In our December 16, 1999 NPR, we also proposed approval of Delaware's enforceable commitment to submit an adopted ROP plan through the attainment year for the Delaware portion of the Philadelphia area. Delaware has fulfilled that enforceable commitment.

On August 30, 2001 (66 FR 45800), EPA proposed approval of the Post-1996 ROP plans adopted and submitted by

Delaware to demonstrate ROP from 1996 through the attainment year. In that same notice, EPA also proposed approval of Delaware's contingency measures for ROP. EPA received no comments on any of the actions it proposed to approve in the August 30, 2001 NPR. In this final rulemaking action, we are approving the Post-1996 ROP plans submitted by Delaware which demonstrate ROP from 1996 through the 2005 attainment year and Delaware's contingency measures for ROP.

On February 22, 2000 (65 FR 8703), EPA published a notice of availability on guidance memoranda relating to the ten one-hour ozone attainment demonstrations (including the Philadelphia area) proposed for approval or conditional approval on December 16, 1999. The guidance memoranda are entitled: ''Guidance on Motor Vehicle Emissions Budgets in One-Hour Ozone Attainment Demonstrations'' dated November 3, 1999, and ''Guidance on the Reasonably Available Control Measures (RACM) Requirement and Attainment Demonstration Submissions for Ozone Nonattainment Areas'' dated November 30, 1999.

On July 28, 2000 (65 FR 46383), EPA published a supplemental notice of proposed rulemaking (SNPR) on the attainment demonstration. In that supplemental notice, we clarified and expanded on two issues relating to the motor vehicle emissions budgets in attainment demonstration SIP revisions. This supplemental notice is discussed in Section I.E.(1) of this document.

In its August 30, 2001 NPR (66 FR 45800) referenced earlier in this document, EPA also proposed approval of Delaware's revisions to its 2005 attainment plan consisting of commitments to: (1) submit by October 31, 2001, additional measures to achieve the additional reductions necessary for attainment, and (2) revise the SIP and the motor vehicle emissions budgets within a year of the release of MOBILE6. EPA received no comments on any of the actions it proposed to approve in the August 30, 2001 NPR. In this final rulemaking action, we are approving Delaware's revised commitments.

The comments EPA did receive on the December 16, 1999 (64 FR 70444) and July 28, 2000 (65 FR 46383) proposals listed in this section, relevant to the Philadelphia area's attainment demonstration, are discussed in Sections I. K. and II. of this document.

C. What Were the Conditions for Approval Provided in the Notice of Proposed Rulemaking for the Attainment Demonstration?

On December 16, 1999 (64 FR 70444), EPA proposed approval of the attainment demonstration submitted by the State of Delaware for the Philadelphia area. Our approval was contingent upon certain actions by Delaware. These actions were:

(1) Adopt and submit adequate motor vehicle emissions budgets.

(2) Submit a list of control measures that, when implemented, would be expected to provide sufficient additional emission reductions to further reduce emissions to support the attainment test and a commitment that these measures would not involve additional limits on highway construction beyond those that could be imposed under the submitted motor vehicle emissions budget.

(3) Adopt and submit a rule(s) for the regional NO_X reductions consistent with the modeling demonstration.

(4) Adopt and submit an enforceable commitment, or a reaffirmation of existing enforceable commitment to do the following:

(a) Submit measures by October 31, 2001 for additional emission reductions as required in the attainment demonstration test, and for additional emission reduction measures developed through the regional process; submit an enforceable commitment for the additional measures and a backstop commitment to adopt and submit intrastate measures for the emission reductions in the event the regional process does not recommend measures that produce emission reductions.

(b) Submit a revised SIP and motor vehicle emissions budget by October 31, 2001 if additional measures affect the motor vehicle emissions inventory.

(c) Submit revised SIP and motor vehicle emissions budgets one year after MOBILE6 is issued.

(d) Perform a mid-course review by December 31, 2003.

D. What Amendments to the Attainment Demonstration SIP did Delaware Submit for the Philadelphia Area Since EPA's December 16, 1999 Proposed Action?

The following is a summary of such submittals which includes the submittal dates of revisions, the content of these submissions and other pertinent facts regarding these submissions:

(1) On January 24, 2000, Delaware submitted an addendum to its attainment demonstration plan for the Philadelphia area. This submittal contains the revised motor vehicle emissions budgets that reflect the benefits from EPA's Tier 2/Low Sulfur rule, and enforceable commitments to:

(a) Adopt control measures consistent with the reductions assumed in the attainment plan, and assume reductions in transported NO_X consistent with EPA's NO_X SIP Call;

(b) Adopt additional measures that can be adopted regionally such as in the OTR, or locally;

(c) Submit a revised SIP and motor vehicle emissions budget by October 31, 2001, if the additional measures affect the motor vehicle emissions inventory; and

(d) Conduct a mid-course review by December 31, 2003.

(2) On December 20, 2000, Delaware submitted an amendment to the January 24, 2000 addendum to its attainment demonstration plan for the Philadelphia area. This submittal addresses two commitments that were not clearly listed in the January 24, 2000 addendum, namely:

(a) To revise SIP and motor vehicle emission budgets using MOBILE6 within one year after it is issued.

(b) To adopt and submit additional control measures for the additional emission reductions as required in the attainment demonstration test by October 31, 2001.

(3) On October 9, 2001, the State of Delaware formally submitted a supplement to its 2005 attainment demonstration SIP consisting of an analysis and determination of RACM.

E. What Did the Supplemental Notices of Proposed Rulemaking Cover?

(1) On July 28, 2000, EPA published a supplemental notice of proposed rulemaking (SNPR) on the attainment demonstration (65 FR 46383). In that supplemental notice, we clarified and expanded on two issues relating to the motor vehicle emissions budgets in this attainment demonstration SIP revision.

(a) First, we proposed a clarification of what occurs if we finalize conditional or full approval of this and certain other attainment demonstration SIP revisions based upon a state's commitment to revise the SIP's motor vehicle emissions budgets in the future. Under the proposal, the motor vehicle emissions budgets in the approved SIP will apply for transportation conformity purposes only until the budgets are revised consistent with the commitment, and we have found the new budgets adequate. Once we have found the newly revised budgets adequate, then they would apply instead of the previous conditionally or fully approved budgets. Normally, revisions to SIP-approved budgets cannot be used

for conformity purposes until we approve those revised budgets as a SIP revision. Therefore, we proposed to clarify that when our approval of this and certain other one-hour ozone attainment demonstrations is based upon a commitment to future revisions to the budget, our approval of the budget lasts only until revisions to satisfy those conditions are submitted and we find them adequate.

(b) Second, we proposed that states may opt to commit to revise their emissions budgets one year after the release of the MOBILE6 model, as originally proposed on December 16, 1999. Or, states may commit to a new option, *i.e.*, to revise their budgets two years following the release of the MOBILE6 model, provided that conformity is not determined without adequate MOBILE6-derived SIP budgets during the second year. This second option is not germane to Delaware's attainment plan for the Philadelphia area because Delaware has submitted an enforceable commitment to revise the motor vehicle emissions budgets within one year after the official release of the MOBILE6 model.

(c) In addition, on July 28, 2000 (65 FR at 46383), we reopened the comment period to take comment on these two issues and to allow comment on any additional materials that were placed in the dockets for the proposed actions close to or after the initial comment period on the December 16, 1999 closed on February 14, 2000. For many of the areas, additional information had been placed in the docket close to the time or since the initial comment period concluded. In general, these materials were identified as consisting of motor vehicle emissions budgets, and revised or additional commitments or reaffirmations submitted by the states.

(2) On August 30, 2001 (66 FR 45800), EPA proposed approval of all of the Post-1996 ROP plans adopted by Delaware to demonstrate ROP from 1996 through the attainment year. In that same notice, EPA also proposed approval of Delaware's contingency measures for ROP. In that August 30, 2001 NPR, EPA also proposed approval of Delaware's revisions to its 2005 attainment SIP consisting of commitments to: (1) Submit by October 31, 2001, additional measures to achieve the additional reductions necessary for attainment, and (2) revise the SIP and the motor vehicle emissions budgets within a year of the release of MOBILE6. EPA received no comments on any of the actions it proposed to approve in the August 30, 2001 NPR.

(3) On September 7, 2001 (66 FR 46755), EPA published a SNPR on Delaware's 2005 attainment demonstration. In that supplemental notice, we proposed to approve Delaware's RACM analysis and determination for the Philadelphia area. We received no comments on the September 7, 2001 SNPR.

F. When Did EPA Make a Determination Regarding the Adequacy of the Attainment Motor Vehicle Emissions Budgets for the Delaware Portion of the Philadelphia Area?

Delaware submitted a revision to the attainment plan SIP for the Philadelphia area on January 24, 2000. This submittal contains revised motor vehicle emissions budgets for the attainment year of 2005 that reflect the benefits of the Heavy Duty Diesel Engine (HDDE) rule, the National Low Emission Vehicle (NLEV) program and the Federal Tier 2/ Low Sulfur rule.

We began our adequacy review process on the budgets in the January 24, 2000 submittal under our adequacy process by a posting on EPA's Web site (*www.epa.gov/otaq/transp/conform/adequacy.htm*) that started a public comment period on the adequacy of the motor vehicle emissions budgets in the January 24, 2000 SIP revision for the Philadelphia area. We prepared a technical support document for our adequacy determination that included responses to any public comments received during the adequacy process comment period. On May 31, 2000, EPA found the budgets of Delaware's attainment demonstration plan for the Philadelphia area adequate (Letter from Katz to Tyler dated May 31, 2000). In a June 8, 2000, **Federal Register** notice we announced that we had found the budgets of the January 24, 2000 submission adequate (65 FR 36440). (The proposed approval of the budgets in the January 24, 2000 submission is discussed in Section I.B. of this document, and the response to any comments received on the proposed approval are in Section II. of this document.) Our findings of adequacy and responses to comments can be accessed at *www.epa.gov/otaq/traq* (once there, click on the ''conformity'' button).

On December 20, 2000, Delaware submitted, as a formal SIP revision, an acceptable commitment to revise the attainment year motor vehicle emissions budgets using the MOBILE6 model within one year after the release of the MOBILE6 model. As stated earlier in this document, on August 30, 2001 (66 FR 45800), EPA published a NPR proposing to approve Delaware's revised commitments to revise the SIP and the motor vehicle emissions budgets within a year of the release of MOBILE6. EPA received no comments on the August 30, 2001 NPR. In this final rulemaking action, we are approving Delaware's commitment.

G. What SIP Elements Must be Approved Before Full Approval of the Attainment Demonstration Can Be Granted?

In the December 16, 1999 NPR for Delaware's attainment demonstration SIP for the Philadelphia area, EPA noted in Table 4, the submission and approval status of many of the control measures or part D requirements of the Act for serious and severe areas. The following provides the current status of those SIP elements which are prerequisite for approval of the attainment demonstration but which were not fully approved as of December 16, 1999 (or which were not listed in Table 4 in the NPR as fully approved):

(1) On September 17, 1999, EPA approved Delaware's sanitary landfills SIP (64 FR 50453).

(2) On December 28, 1999, EPA approved Delaware's National Low Emission Vehicle (NLEV) SIP (64 FR 72564).

(3) On March 9, 2000, EPA approved Delaware's NO_X budget rule consistent with the Ozone Transport Commission's (OTC) Memorandum of Understanding (MOU) Phase II (65 FR 12481).

(4) On February 7, 2001, EPA approved Delaware's New Source Review Rule (66 FR 9209).

(5) On May 17, 2001, EPA approved Delaware's NO_X trading rule consistent with the NO_X SIP call (66 FR 27549).

(6) On June 14, 2001, EPA approved Delaware's NO_X RACT rule (66 FR 32231).

H. What Measures Are in the Control Strategy for the Post-1996 Plan and the Attainment Demonstration?

TABLE 3.—CONTROL MEASURES IN THE ONE-HOUR OZONE POST-1996 ROP AND ATTAINMENT DEMONSTRATION FOR THE PHILADELPHIA OZONE NONATTAINMENT AREA

Control measure	Type of measure	Credited in Post-1996 plan for which milestone years	Credited in attainment plan
Enhanced Inspection & Maintenance	Approved SIP	Yes—1999 through 2005	Yes
Federal Motor Vehicle Control program	Federal	Tier 1—1999 through 2005	Tier 1 and 2
NLEV [1]	Approved SIP opt-in	Yes—1999 through 2005	Yes
Reformulated Gasoline (Phase 1 & 2)	Federal	Phase 1—1999 Phase 2—2002 and 2005	Phase 2
Federal Non-road Gasoline Engine standards	Federal	Yes—1999 through 2005	Yes
Federal Non-road Heavy Duty diesel engine standards.	Federal	Yes—1999 through 2005	Yes
Rail Road Locomotive Controls	Federal	Yes—2002 and 2005	Yes
NO_X RACT	Approved SIP	Yes—1999 through 2005	Yes
OTR Regional NO_X MOU	Approved SIP	Yes—1999 and 2002	NO_X SIP Call
Federal NO_X SIP Call Regional Control	Approved SIP	Yes—2005	Yes
Non-CTG RACT to 50 tpy	Approved SIP	Yes—1999 through 2005	Yes
Stage II Vapor Recovery &	Approved SIP	Yes—1999 through 2005	Yes
On-board Refueling Vapor Recovery (ORVR)	Federal.		
AIM Surface Coatings	Federal	Yes—2002 and 2005	Yes
Consumer & Commercial products	Federal	Yes—2002 and 2005	Yes
Autobody Refinishing	Federal/Approved SIP	Yes—1999 through 2005	Yes
Industrial Cleaning Solvents	Approved SIP	Yes—1999 through 2005	Yes
Open Burning Ban	Approved SIP	Yes—1999 through 2005	Yes
Stage I Vapor Recovery	Approved SIP	Yes—1999 through 2005	Yes
Offset Lithography	Approved SIP	Yes—1999 through 2005	Yes
Heavy Duty Diesel Engines (On-road)	Federal	Yes—2005	Yes
VOC RACT	Approved SIP	Yes—1999 through 2005	Yes
Sanitary Landfills	Approved SIP	Yes—1999 through 2005	Yes
Benzene Waste Rule	Federal	Yes—1999 through 2005	Yes

[1] To the extent NLEV not superceded by Tier 2.

I. What Are the Approved Transportation Conformity Budgets, and What Effects Does This Action Have on Transportation Planning?

(1) What Are the Approved Transportation Conformity Budgets in the Post 1996 ROP Plans and the Attainment Demonstration?

EPA has determined that the budgets in the Post-1996 ROP plans and the attainment demonstration plan are adequate, and is approving these budgets in this final action. These Delaware plans establish separate VOC and NO_X budgets for Kent and New Castle Counties, in the Philadelphia area (these are commonly referred to as sub-budgets). The motor vehicle emissions budgets that EPA is approving for each of the two counties are listed in Table 4 by type of control strategy SIP, the amounts in tons per day (TPD), the year associated with the budgets, and the effective date of EPA's adequacy determination.

TABLE 4.—TRANSPORTATION CONFORMITY BUDGETS OF DELAWARE'S CONTROL STRATEGY SIPS FOR THE PHILADELPHIA AREA

Type of control strategy SIP	Year	Kent County		New Castle County		Effective date of adequacy determination
		VOC	NO_X	VOC	NO_X	
Post 1996 ROP Plan	1999	7.55	11.17	22.49	29.41	April 29, 1999 (64 FR 31217, published June 10, 1999).
Post 1996 ROP Plan	2002	6.30	9.81	18.44	27.29	June 23, 2000, (65 FR 36440, published June 8, 2000).
Post 1996 ROP Plan	2005	4.84	7.90	14.76	22.92	May 2, 2001 (66 FR 19769, published April 17, 2001).
Attainment Demonstration	2005	4.84	7.90	14.76	22.92	June 23, 2000, (65 FR 36440, published June 8, 2000).

EPA has concluded that these SIP revisions meet the requirements of the Act applicable to the type of control strategy SIP, that is, demonstrates attainment or ROP with the applicable budgets and contains the measures necessary to support these budgets.

(2) Is a Requirement To Redetermine Conformity Within 18-months Under Section 93.104 of the Conformity Rule Triggered?

Our conformity rule establishes the frequency by which transportation plans and transportation improvement programs must be found to conform to the SIP and includes trigger events tied to both submittal and approval of a SIP [40 CFR 93.104(e)]. Both initial submission and initial approval trigger a redetermination of conformity. This final rule has the effect of approving motor vehicle emissions budgets contained in the attainment demonstration and the Post-1996 ROP plans. We are advising affected transportation planning agencies that this final approval of the budgets listed in Table 4 will require a redetermination that existing transportation plans and TIPs conform

within 18 months of the effective date listed in the DATES section of this document. See 40 CFR 93.104(e).

J. What Happens to the Approved 2005 Budgets When States Change Their Budgets Using the MOBILE6 Model?

All states whose attainment demonstration includes the effects of the Tier 2/Low Sulfur program have committed to revise and resubmit their motor vehicle emissions budgets after EPA releases the MOBILE6 model. On December 20, 2000, Delaware submitted a commitment to revise the 2005 motor vehicle budgets in the attainment demonstration within one year of EPA's release of the MOBILE6 model. In this final rulemaking action, EPA is approving, as a SIP revision, Delaware's commitment to revise the 2005 motor vehicle budgets in the attainment demonstration within one year of EPA's release of the MOBILE6 model. If Delaware fails to meet its commitment to submit revised budgets using the MOBILE6 model, EPA could make a finding of failure to implement the SIP, which would start a sanctions clock under section 179 of the Act.

As we proposed in our July 28, 2000 SNPR (65 FR 46383), today's final approval of the budgets contained in the 2005 attainment plan will be effective for conformity purposes only until such time as revised motor vehicle emissions budgets are submitted (pursuant to the commitment to submit revised budgets using the MOBILE6 model within one year of EPA's release of that model) and we have found those revised budgets adequate. We are only approving the attainment demonstration and its current budgets because Delaware has provided an enforceable commitment to revise the budgets using the MOBILE6 model within one year of EPA's release of that model. Therefore, we are limiting the duration of our approval of the current budgets only until such time as the revised budgets are found adequate. Those revised budgets will be more appropriate than the budgets we are approving for conformity purposes for the time being.

Similarly, EPA is only approving the 2005 attainment demonstration and its current budgets because Delaware has provided an enforceable commitment to submit new budgets as a revision to the attainment SIP consistent with any new measures submitted to fill any shortfall, if the additional control measures affect on-road motor vehicle emissions. Therefore, EPA is limiting the duration of our approval of the current budgets only until such time as any such revised budgets are found adequate. Those revised budgets will be more appropriate than the budgets we are approving for conformity purposes for the time being.

K. What Comments Were Received on the Proposed Approvals and How Has EPA Responded to Them?

EPA received comments from the public on the Notice of Proposed Rulemaking (NPR) published on December 16, 1999 (64 FR 70444) for Delaware's ozone attainment demonstration for the Philadelphia area. Comments were received from Robert E. Yuhnke on behalf of Environmental Defense and Natural Resources Defense Council and from the Midwest Ozone Group.

EPA also received comments from the public on the supplemental notice of proposed rulemaking published on July 28, 2000 (65 FR 46383), in which EPA clarified and expanded on two issues relating to the motor vehicle emissions budgets in the attainment demonstration SIPs. Comments were received from Environmental Defense and from ELM Packaging Co.

As previously noted, EPA received no comments on either its August 30, 2001 (66 FR 45800) or September 7, 2001 (66 FR 46755) proposed actions as discussed in Section I.E. of this document.

II. Response to Comments

The following discussion summarizes and responds to the comments received on EPA's December 16, 1999 (64 FR 70444) and July 28, 2000 (65 FR 46383) proposals to approve Delaware's 2005 attainment demonstration. These are the only proposed actions for which we received comments.

A. Attainment Demonstrations—Weight of Evidence

Comment: The weight of evidence approach does not demonstrate attainment or meet the Act requirements for a modeled attainment demonstration. Commenters added several criticisms of various technical aspects of the weight of evidence approach, including certain specific applications of the approach to particular attainment demonstrations. These comments are discussed in the following response.

Response: Under section 182(c)(2) and (d) of the Act, serious and severe ozone nonattainment areas were required to submit by November 15, 1994, demonstrations of how they would attain the one-hour standard. Section 182(c)(2)(A) provides that ''[t]his attainment demonstration must be based on photochemical grid modeling or any other analytical method determined by the Administrator, in the Administrator's discretion, to be at least as effective.'' As described in more detail below, EPA allows states to supplement their photochemical modeling results, with additional evidence designed to account for uncertainties in the photochemical modeling, to demonstrate attainment. This approach is consistent with the requirement of section 182(c)(2)(A) that the attainment demonstration ''be based on photochemical grid modeling,'' because the modeling results constitute the principal component of EPA's analysis, with supplemental information designed to account for uncertainties in the model. This interpretation and application of the photochemical modeling requirement of section 182(c)(2)(A) finds further justification in the broad deference Congress granted EPA to develop appropriate methods for determining attainment, as indicated in the last phrase of section 182(c)(2)(A).

The flexibility granted to EPA under section 182(c)(2)(A) is reflected in the regulations EPA promulgated for modeled attainment demonstrations. These regulations provide, ''The adequacy of a control strategy shall be demonstrated by means of applicable air quality models, data bases, and other requirements specified in [40 CFR part 51, Appendix W] (Guideline on Air Quality Models).''[1] 40 CFR 51.112(a)(1). However, the regulations further provide, ''Where an air quality model specified in appendix W * * * is inappropriate, the model may be modified or another model substituted [with approval by EPA, and after] notice and opportunity for public comment. * * *'' Appendix W, in turn, provides that, ''The Urban Airshed Model (UAM) is recommended for photochemical or reactive pollutant modeling applications involving entire urban areas,'' but further refers to EPA's modeling guidance for data requirements and procedures for operating the model. 40 CFR part 51, App. W section 6.2.1.a. The modeling guidance discusses the data requirements and operating procedures, as well as interpretation of model results as they relate to the attainment demonstration. This provision references guidance published in 1991, but EPA envisioned the guidance would change as we gained experience with model applications, which is why the guidance is referenced, but does not appear, in

[1] The August 12, 1996 version of ''Appendix W to Part 51—Guideline on Air Quality Models'' was the rule in effect for these attainment demonstrations. EPA is proposing updates to this rule, that will not take effect until the rulemaking process for them is complete.

Appendix W. With updates in 1996 and 1999, the evolution of EPA's guidance has led us to use both the photochemical grid model, and additional analytical methods approved by EPA.

The modeled attainment test compares model predicted one-hour daily maximum ozone concentrations in all grid cells for the attainment year to the level of the NAAQS. The results may be interpreted through either of two modeled attainment or exceedance tests: the deterministic test or the statistical test. Under the deterministic test, a predicted concentration above 0.124 parts per million (ppm) ozone indicates that the area is expected to exceed the standard in the attainment year and a prediction at or below 0.124 ppm indicates that the area is expected to not exceed the standard. Under the statistical test, attainment is demonstrated when all predicted (i.e., modeled) one-hour ozone concentrations inside the modeling domain are at, or below, an acceptable upper limit above the NAAQS permitted under certain conditions (depending on the severity of the episode modeled).[2]

In 1996, EPA issued guidance [3] to update the 1991 guidance referenced in 40 CFR part 51, App. W, to make the modeled attainment test more closely reflect the form of the NAAQS (i.e., the statistical test described above), to consider the area's ozone design value and the meteorological conditions accompanying observed exceedances, and to allow consideration of other evidence to address uncertainties in the modeling databases and application. When the modeling does not conclusively demonstrate attainment, EPA has concluded that additional analyses may be presented to help determine whether the area will attain the standard. As with other predictive tools, there are inherent uncertainties associated with air quality modeling and its results. The inherent imprecision of the model means that it may be inappropriate to view the specific numerical result of the model as the only determinant of whether the SIP controls are likely to lead to attainment. The EPA's guidance recognizes these limitations, and provides a means for considering other evidence to help assess whether attainment of the NAAQS is likely to be achieved. The process by which this is done is called a weight of evidence (WOE) determination. Under a WOE determination, the state can rely on, and EPA will consider in addition to the results of the modeled attainment test, other factors such as other modeled output (e.g., changes in the predicted frequency and pervasiveness of one-hour ozone NAAQS exceedances, and predicted change in the ozone design value); actual observed air quality trends (*i.e.*, analyses of monitored air quality data); estimated emissions trends; and the responsiveness of the model predictions to further controls.

In 1999, EPA issued additional guidance [4] that makes further use of model results for base case and future emission estimates to predict a future design value. This guidance describes the use of an additional component of the WOE determination, which requires, under certain circumstances, additional emission reductions that are or will be approved into the SIP, but that were not included in the modeling analysis, that will further reduce the modeled design value. An area is considered to monitor attainment if each monitor site has air quality observed ozone design values (4th highest daily maximum ozone using the three most recent consecutive years of data) at or below the level of the standard. Therefore, it is appropriate for EPA, when making a determination that a control strategy will provide for attainment, to determine whether or not the model-predicted future design value is expected to be at or below the level of the standard. Since the form of the one-hour NAAQS allows exceedances, it did not seem appropriate for EPA to require the test for attainment to be ''no exceedances'' in the future model predictions.

The method outlined in EPA's 1999 guidance uses the highest measured design value across all sites in the nonattainment area for each of three years. These three ''design values'' represent the air quality observed during the time period used to predict ozone for the base emissions. This is appropriate because the model is predicting the change in ozone from the base period to the future attainment date. The three yearly design values (highest across the area) are averaged to account for annual fluctuations in meteorology. The result is an estimate of an area's base year design value. The base year design value is multiplied by a ratio of the peak model predicted ozone concentrations in the attainment year (i.e., average of daily maximum concentrations from all days modeled) to the peak model predicted ozone concentrations in the base year (i.e., average of daily maximum concentrations from all days modeled). The result is an attainment year design value based on the relative change in peak model predicted ozone concentrations from the base year to the attainment year. Modeling results also show that emission control strategies designed to reduce areas of peak ozone concentrations generally result in similar ozone reductions in all core areas of the modeling domain, thereby providing some assurance of attainment at all monitors.

In the event that the attainment year design value is above the standard, the 1999 guidance provides a method for identifying additional emission reductions, not modeled, which at a minimum provide an estimated attainment year design value at the level of the standard. This step uses a locally derived factor which assumes a linear relationship between ozone and the precursors.

A commenter criticized the 1999 guidance as flawed on grounds that it allows the averaging of the three highest air quality sites across a region, whereas EPA's 1991 and 1996 modeling guidance requires that attainment be demonstrated at each site. This has the effect of allowing lower air quality concentrations to be averaged against higher concentrations thus reducing the total emission reduction needed to attain at the higher site. The commenter does not appear to have described the guidance accurately. The guidance does not recommend averaging across a region or spatial averaging of observed data. The guidance does recommend determination of the highest site in the region for each of the three-year periods, determined by the base year modeled. For example, if the base year is 1990, it is the amount of emissions in 1990 that must be adjusted or evaluated (by accounting for growth and controls) to determine whether attainment results. These 1990 emissions would contribute to three design value periods (1988–90, 1989–91 and 1990–92).

Under the approach of the guidance document, EPA determined the design value for each of those three-year periods, and then averaged those three design values, to determine the base design value. This approach is appropriate because, as just noted, the 1990 emissions contributed to each of those periods, and there is no reason to believe the 1990 (episodic) emissions resulted in the highest or lowest of the

[2] Guidance on the Use Of Modeled Results to Demonstrate Attainment of the Ozone NAAQS EPA–454/B–95–007, June 1996.

[3] Ibid.

[4] ''Guidance for Improving Weight of Evidence Through Identification of Additional Emission Reductions, Not Modeled.'' U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Emissions, Monitoring, and Analysis Division, Air Quality Modeling Group, Research Triangle Park, NC 27711. November 1999. Web site: *http://www.epa.gov/ttn/scram.*

three design values. Averaging the three years is beneficial for another reason: It allows consideration of a broader range of meteorological conditions-those that occurred throughout the 1988–1992 period, rather than the meteorology that occurs in one particular year or even one particular ozone episode within that year. Furthermore, EPA relied on three-year averaging only for purposes of determining one component, *i.e.*—the small amount of additional emission reductions not modeled—of the WOE determination. The WOE determination, in turn, is intended to be part of a qualitative assessment of whether additional factors (including the additional emissions reductions not modeled), taken as a whole, indicate that the area is more likely than not to attain.

A commenter criticized the component of this WOE factor that estimates ambient improvement because it does not incorporate complete modeling of the additional emissions reductions. However, the regulations do not mandate, nor does EPA guidance suggest, that states must model all control measures being implemented. Moreover, a component of this technique-the estimation of future design value—should be considered a model predicted estimate. Therefore, results from this technique are an extension of ''photochemical grid'' modeling and are consistent with section 182(c)(2)(A). Also, a commenter believes that EPA has not provided sufficient opportunity to evaluate the calculations used to estimate additional emission reductions. EPA provided a full 60-day period for comment on all aspects of the proposed rule. EPA has received several comments on the technical aspects of the approach and the results of its application, as discussed above and in the responses to the individual SIPs.

A commenter states that application of the method of attainment analysis used for the December 16, 1999 NPRs will yield a lower control estimate than if we relied entirely on reducing maximum predictions in every grid cell to less than or equal to 124 ppb on every modeled day. However, the commenter's approach may overestimate needed controls because the form of the standard allows up to 3 exceedances in 3 years in every grid cell. If the model over predicts observed concentrations, predicted controls may be further overestimated. EPA has considered other evidence, as described above through the weight of evidence determination.

When reviewing a SIP, EPA must make a determination that the control measures adopted are reasonably likely to lead to attainment. Reliance on the WOE factors allows EPA to make this determination based on a greater body of information presented by the states and available to EPA. This information includes model results for the majority of the control measures. Although not all measures were modeled, EPA reviewed the model's response to changes in emissions as well as observed air quality changes to evaluate the impact of a few additional measures, not modeled. EPA's decision was further strengthened by each state's commitment to check progress towards attainment in a mid-course review and to adopt additional measures, if the anticipated progress is not being made.

A commenter further criticized EPA's technique for estimating the ambient impact of additional emissions reductions not modeled on grounds that EPA employed a ''rollback'' modeling technique that, according to the commenter, is precluded under EPA regulations. The commenter explained that 40 CFR part 51, App. W section 6.2.1.e. provides, ''Proportional (rollback/forward) modeling is not an acceptable procedure for evaluating ozone control strategies.'' Section 14.0 of Appendix W defines ''rollback'' as ''a simple model that assumes that if emissions from each source affecting a given receptor are decreased by the same percentage, ambient air quality concentrations decrease proportionately.'' Under this approach if 20 percent improvement in ozone is needed for the area to reach attainment, it is assumed a 20 percent reduction in VOC would be required. There was no approach for identifying NO_X reductions.

The ''proportional rollback'' approach is based on a purely empirically/mathematically derived relationship. EPA did not rely on this approach in its evaluation of the attainment demonstrations. The prohibition in Appendix W applies to the use of a rollback method which is empirically/mathematically derived and independent of model estimates or observed air quality and emissions changes as the sole method for evaluating control strategies. For the demonstrations under proposal, EPA used a locally derived (as determined by the model and/or observed changes in air quality) ratio of change in emissions to change in ozone to estimate additional emission reductions to achieve an additional increment of ambient improvement in ozone.

For example, if monitoring or modeling results indicate that ozone was reduced by 25 ppb during a particular period, and that VOC and NO_X emissions fell by 20 tons per day and 10 tons per day respectively during that period, EPA developed a ratio of ozone improvement related to reductions in VOC and NO_X. This formula assumes a linear relationship between the precursors and ozone for a small amount of ozone improvement, but it is not a ''proportional rollback'' technique. Further, EPA uses these locally derived adjustment factors as a component to estimate the extent to which additional emissions reductions—not the core control strategies—would reduce ozone levels and thereby strengthen the weight of evidence test. EPA uses the UAM to evaluate the core control strategies. This limited use of adjustment factors is more technically sound than the unacceptable use of proportional rollback to determine the ambient impact of the entire set of emissions reductions required under the attainment SIP.

The limited use of adjustment factors is acceptable for practical reasons: it obviates the need to expend more time and resources to perform additional modeling. In addition, the adjustment factor is a locally derived relationship between ozone and its precursors based on air quality observations and/or modeling which is more consistent with recommendations referenced by Appendix W, and does not assume a direct proportional relationship between ozone and its precursors. Lastly, the requirement that areas perform a mid-course review (a check of progress toward attainment), provides a margin of safety.

A commenter expressed concerns that EPA used a modeling technique (proportional rollback) that was expressly prohibited by 40 CFR part 51, Appendix W, without expressly proposing to do so in a notice of proposed rulemaking. However, the commenter is mistaken. As explained above, EPA did not use or rely upon a proportional rollback technique in this rulemaking, but used UAM to evaluate the core control strategies and then applied its WOE guidance. Therefore, because EPA did not use an ''alternative model'' to UAM, it did not trigger an obligation to modify Appendix W. Furthermore, EPA did propose to use the November 1999 guidance, ''Guidance for Improving Weight of Evidence Through Identification of Additional Emission Reductions, Not Modeled,'' in the December 16, 1999 NPR and has responded to all comments received on that guidance elsewhere in this document.

A commenter also expressed concern that EPA applied unacceptably broad discretion in fashioning and applying the WOE determinations. For all of the attainment submittals proposed for approval in December 1999 concerning serious and severe ozone nonattainment areas, EPA first reviewed the UAM results. In all cases, the UAM results did not pass the deterministic test. In two cases—Milwaukee and Chicago—the UAM results passed the statistical test; in the rest of the cases, the UAM results failed the statistical test. The UAM has inherent limitations that, in EPA's view, were manifest in all these cases. These limitations include: (1) only selected time periods were modeled, not the entire three-year period used as the definitive means for determining an area's attainment status; (2) there are inherent uncertainties in the model formulation and model inputs such as hourly emission estimates, emissions growth projections, biogenic emission estimates, and derived wind speeds and directions. As a result, for all areas, even Milwaukee and Chicago, EPA examined additional analyses to indicate whether additional SIP controls would yield meaningful reductions in ozone values. These analyses did not point to the need for additional emission reductions for Springfield, Greater Connecticut, Metropolitan Washington, DC, Chicago and Milwaukee, but did point to the need for additional reductions, in varying amounts, in the other areas. As a result, the other areas submitted control requirements to provide the indicated level of emissions reductions. EPA applied the same methodology in these areas, but because of differences in the application of the model to the circumstances of each individual area, the results differed on a case-by-case basis.

As another WOE factor, for areas within the NO_X SIP call domain, results from the EPA regional modeling for NO_X controls as well as the Tier 2/Low Sulfur program were considered. Also, for all of the areas, EPA considered recent changes in air quality and emissions. For some areas, this was helpful because there were emission reductions in the most recent years that could be related to observed changes in air quality, while for other areas there appeared to be little change in either air quality or emissions. For areas in which air quality trends, associated with changes in emissions levels, could be discerned, these observed changes were used to help decide whether or not the emission controls in the plan would provide progress towards attainment.

The commenter also complained that EPA has applied the WOE determinations to adjust modeling results only when those results indicate nonattainment, and not when they indicate attainment. First, we disagree with the premise of this comment: EPA does not apply the WOE factors to adjust model results. EPA applies the WOE factors as additional analysis to compensate for uncertainty in the air quality modeling. Second, EPA has applied WOE determinations to all of the attainment demonstrations proposed for approval in December 1999. Although for most of them, the air quality modeling results by themselves indicated nonattainment, for two metropolitan areas—Chicago and Milwaukee, including parts of the States of Illinois, Indiana, and Wisconsin, the air quality modeling did indicate attainment on the basis of the statistical test.

The commenter further criticized EPA's application of the WOE determination on grounds that EPA ignores evidence indicating that continued nonattainment is likely, such as, according to the commenter, monitoring data indicating that ozone levels in many cities during 1999 continue to exceed the NAAQS by margins as wide or wider than those predicted by the UAM. EPA has reviewed the evidence provided by the commenter. The 1999 monitor values do not constitute substantial evidence indicating that the SIPs will not provide for attainment. These values do not reflect either the local or regional control programs which are scheduled for implementation in the next several years. Once implemented, these controls are expected to lower emissions and thereby lower ozone values. Moreover, there is little evidence to support the statement that ozone levels in many cities during 1999 continue to exceed the NAAQS by margins as wide or wider than those predicted by the UAM. Since areas did not model 1999 ozone levels using 1999 meteorology and 1999 emissions which reflect reductions anticipated by control measures, that are or will be approved into the SIP, there is no way to determine how the UAM predictions for 1999 compare to the 1999 air quality. Therefore, we can not determine whether or not the monitor values exceed the NAAQS by a wider margin than the UAM predictions for 1999. In summary, there is little evidence to support the conclusion that high exceedances in 1999 will continue to occur after adopted control measures are implemented.

In addition, the commenter argued that in applying the WOE determinations, EPA ignored factors showing that the SIPs under-predict future emissions, and the commenter included as examples certain mobile source emissions sub-inventories. EPA did not ignore possible under-prediction in mobile emissions. EPA is presently evaluating mobile source emissions data as part of an effort to update the computer model for estimating mobile source emissions. EPA is considering various changes to the model, and is not prepared to conclude at this time that the net effect of all these various changes would be to increase or decrease emissions estimates. For attainment demonstration SIPs that rely on the Tier 2/Low Sulfur program for attainment or otherwise (i.e., reflect these programs in their motor vehicle emissions budgets), states have committed to revise their motor vehicle emissions budgets after the MOBILE6 model is released. EPA will work with states on a case-by-case basis if the new emission estimates raise issues about the sufficiency of the attainment demonstration. If analysis indicates additional measures are needed, EPA will take the appropriate action.

B. Reliance on the NO_X SIP Call and Tier II

Comment: Several commenters stated that given the uncertainty surrounding the NO_X SIP Call at the time of EPA's proposals on the attainment demonstrations, there is no basis for the conclusion reached by EPA that states should assume implementation of the NO_X SIP Call, or rely on it as a part of their demonstrations. One commenter claims that there were errors in the emissions inventories used for the NO_X SIP Call Supplemental Notice (SNPR) and that these inaccuracies were carried over to the modeling analyses, estimates of air quality based on that modeling, and estimates of EPA's Tier II tailpipe emissions reduction program not modeled in the demonstrations. Thus, because of the inaccuracies in the inventories used for the SIP Call, the attainment demonstration modeling is also flawed. Finally, one commenter suggests that modeling data demonstrates that the benefits of imposing NO_X SIP Call controls are limited to areas near the sources controlled.

Response: These comments were submitted prior to several court decisions largely upholding EPA's NO_X SIP Call. *Michigan* v. *EPA*, 213 F.3d 663 (D.C. Cir. 2000), *cert. denied*, __ U.S. __, 121 S.Ct. 1225, 149 L.Ed. 135 (2001); *Appalachian Power* v. *EPA*, 251 F.3d 1026 (D.C. Cir. 2001). In those cases, the court largely upheld the NO_X SIP Call. Although a few issues were vacated or remanded to EPA for further

consideration, these issues do not concern the accuracy of the emission inventories relied on for purposes of the SIP Call. Moreover, contrary to the commenter's suggestion, the SIP Call modeling data bases were not used to develop estimates of reductions from the Tier II program for the severe-area one-hour attainment demonstrations. Accordingly, the commenter's concerns that inaccurate inventories for the SIP Call modeling lead to inaccurate results for the severe-area one-hour attainment demonstrations are inapposite.

The remanded issues do affect the ability of EPA and the states to achieve the full level of the SIP Call reductions by May 2003. First, the court vacated the rule as it applied to two states—Missouri and Georgia—and also remanded the definition of a co-generator and the assumed emission limit for internal combustion engines. EPA has informed the states that until EPA addresses the remanded issues, EPA will accept SIPs that do not include those small portions of the emission budget. However, EPA is planning to propose a rule shortly to address the remanded issues and ensure that emission reductions from these states and the emission reductions represented by the two source categories are addressed in time to benefit the severe nonattainment areas. Also, although the court in the *Michigan* case subsequently issued an order delaying the implementation date to no later than May 31, 2004, and the *Appalachian Power* case remanded an issue concerning computation of the EGU growth factor, it is EPA's view that states should assume that the SIP Call reductions will occur in time to ensure attainment in the severe nonattainment areas. Both EPA and the states are moving forward to implement the SIP Call.

Finally, contrary to the commenter's conclusions, EPA's modeling to determine the region-wide impacts of the NO_X SIP Call clearly shows that regional transport of ozone and its precursors is impacting nonattainment areas several states away. This analysis was upheld by the court in *Michgan*.

C. Attainment and Rate-of-Progress Demonstrations—Approval of Demonstrations that Rely on State Commitments or State Rules for Emission Limitations to Lower Emissions in the Future not Yet Adopted by the State and/or Approved by EPA

Comment: Several commenters disagreed with EPA's proposal to approve states' attainment and ROP demonstrations because, (a) not all of the emissions reductions assumed in the demonstrations have actually taken place, (b) are reflected in rules yet to be adopted and approved by a state and approved by EPA as part of the SIP, (c) are credited illegally as part of a demonstration because they are not approved by EPA as part of the SIP, or (d) the commenter maintains that EPA does not have authority to accept enforceable state commitments to adopt measures in the future in lieu of current adopted measures to fill a near-term shortfall of reductions.

Response: EPA disagrees with the comments, and believes—consistent with past practice—that the Act allows approval of enforceable commitments that are limited in scope where circumstances exist that warrant the use of such commitments in place of adopted measures.[5] Once EPA determines that circumstances warrant consideration of an enforceable commitment, EPA believes that three factors should be considered in determining whether to approve the enforceable commitment: (1) Whether the commitment addresses a limited portion of the statutorily-required program; (2) whether the state is capable of fulfilling its commitment; and (3) whether the commitment is for a reasonable and appropriate period of time.

As an initial matter, EPA believes that present circumstances for the New York City, Philadelphia, Baltimore and Houston nonattainment areas warrant the consideration of enforceable commitments. The Northeast states that make up the New York, Baltimore, and Philadelphia nonattainment areas submitted SIPs that they reasonably believed demonstrated attainment with fully adopted measures. After EPA's initial review of the plans, EPA recommended to these areas that additional controls would be necessary to ensure attainment. Because these areas had already submitted plans with many fully adopted rules and the adoption of additional rules would take some time, EPA believed it was appropriate to allow these areas to supplement their plans with enforceable commitments to adopt and submit control measures to achieve the additional necessary reductions. For Delaware's attainment demonstration for the Philadelphia area, EPA has determined that the submission of enforceable commitments in place of adopted control measures for these limited sets of reductions will not interfere with each area's ability to meet its 2005 attainment obligations.

EPA's approach here of considering enforceable commitments that are limited in scope is not new. EPA has historically recognized that under certain circumstances, issuing full approval may be appropriate for a submission that consists, in part, of an enforceable commitment. *See e.g.,* 62 FR 1150, 1187, January 8, 1997 (ozone attainment demonstration for the South Coast Air Basin); 65 FR 18903, April 10, 2000 (revisions to attainment demonstration for the South Coast Air Basin); 63 FR 41326, August 3, 1998 (federal implementation plan for PM–10 for Phoenix); 48 FR 51472 (state implementation plan for New Jersey). Nothing in the Act speaks directly to the approvability of enforceable commitments.[6] However, EPA believes that its interpretation is consistent with provisions of the Act. For example, section 110(a)(2)(A) provides that each SIP ''shall include enforceable emission limitations and other control measures, means or techniques * * * *as well as schedules and timetables for compliance,* as may be necessary or appropriate to meet the applicable requirement of the Act.'' (Emphasis added). Section 172(c)(6) of the Act requires, as a rule generally applicable to nonattainment SIPs, that the SIP ''include enforceable emission limitations and such other control measures, means or techniques * * * *as may be necessary or appropriate* to provide for attainment * * * by the applicable attainment date * * *'' (Emphasis added). The emphasized terms mean that enforceable emission limitations and other control measures do not necessarily need to generate reductions in the full amount needed to attain. Rather, the emissions limitations

[5] These commitments are enforceable by the EPA and citizens under, respectively, sections 113 and 304 of the CAA. In the past, EPA has approved enforceable commitments and courts have enforced these actions against states that failed to comply with those commitments. *See, e.g., American Lung Ass'n of N.J.* v. *Kean*, 670 F. Supp. 1285 (D.N.J. 1987), *aff'd*, 871 F.2d 319 (3rd Cir. 1989); *NRDC* v. *N.Y. State Dept. of Env. Cons.*, 668 F. Supp. 848 (S.D.N.Y. 1987); *Citizens for a Better Env't* v. *Deukmejian*, 731 F. Supp. 1448, *recon. granted in part*, 746 F. Supp. 976 (N.D. Cal. 1990); *Coalition for Clean Air* v. *South Coast Air Quality Mgt. Dist.*, No. CV 97–6916–HLH, (C.D. Cal. Aug. 27, 1999). Further, if a state fails to meet its commitments, EPA could make a finding of failure to implement the SIP under section 179(a) of the Act, which starts an 18-month period for the State to begin implementation before mandatory sanctions are imposed.

[6] Section 110(k)(4) provides for ''conditional approval'' of commitments that need not be enforceable. Under that section, a State may commit to ''adopt specific enforceable measures'' within one-year of the conditional approval. Rather than enforcing such commitments against the State, the Act provides that the conditional approval will convert to a disapproval if ''the State fails to comply with such commitment.''

and other control measures may be supplemented with other SIP rules—for example, the enforceable commitments EPA is approving in this final action—as long as the entire package of measures and rules provides for attainment.

As provided above, after concluding that the circumstances warrant consideration of an enforceable commitment—as they do for the Philadelphia area—EPA would consider three factors in determining whether to approve the submitted commitments. First, EPA believes that the commitments must be limited in scope. In 1994, in considering EPA's authority under section 110(k)(4) to conditionally approve unenforceable commitments, the Court of Appeals for the District of Columbia Circuit struck down an EPA policy that would allow states to submit (under limited circumstances) commitments for entire programs. *Natural Resources Defense Council* v. *EPA,* 22 F.3d 1125 (D.C. Cir. 1994). While EPA does not believe that case is directly applicable here, EPA agrees with the Court that other provisions in the Act contemplate that a SIP submission will consist of more than a mere commitment. *See NRDC,* 22 F.3d at 1134.

In the present circumstances, the commitments address only a small portion of the 2005 attainment plan. For the Philadelphia area, the commitment addresses only 10.6 percent of the VOC and 0.7 percent of the NO_X emission reductions necessary to attain the standard. A summary of the adopted control measures and other components credited in Delaware's attainment demonstration submission are discussed in Sections I.G. and I.H. of this document.

As to the second factor, whether the state is capable of fulfilling the commitment, EPA considered the current or potential availability of measures capable of achieving the additional level of reductions represented by the commitment. For the New York, Philadelphia and Baltimore nonattainment areas, EPA believes that there are sufficient untapped sources of emission reductions that could achieve the minimal levels of additional reductions that the areas need. This is supported by the recent recommendation of the OTC regarding specific controls that could be adopted to achieve the level of reductions needed for each of these three nonattainment areas. Thus, EPA believes that the states will be able to find sources of reductions to meet the shortfall. The states that comprise the New York, Philadelphia and Baltimore nonattainment areas are making significant progress toward adopting the measures to fill the shortfall. The OTC has met and on March 29, 2001, recommended a set of control measures. Currently, Delaware has proposed the regulations for all OTC recommended control measures and has gone to public hearings on those control measures. Delaware has indicated that it would submit the measures no later than October 31, 2001. This time period is fully consistent with the Philadelphia area attaining the standard by its approved attainment date.

The third factor EPA has considered in determining to approve limited commitments for the Philadelphia area attainment demonstration is whether the commitment is for a reasonable and appropriate period. EPA recognizes that both the Act and EPA have historically emphasized the need for submission of adopted control measures in order to ensure expeditious implementation and achievement of required emissions reductions. Thus, to the extent that other factors—such as the need to consider innovative control strategies—support the consideration of an enforceable commitment in place of adopted control measures, the commitment should provide for the adoption of the necessary control measures on an expeditious, yet practicable, schedule.

As previously provided, for New York, Baltimore and Philadelphia, EPA proposed that these areas have time to work within the framework of the OTC to develop, if appropriate, a regional control strategy to achieve the necessary reductions and then to adopt the controls on a state-by-state basis. In the proposed approval of the attainment demonstrations, EPA proposed that these areas would have approximately 22 months to complete the OTC and state-adoption processes—a fairly ambitious schedule—i.e., until October 31, 2001. As a starting point in suggesting this time frame for submission of the adopted controls, EPA first considered the CAA ''SIP Call'' provision of the Act—section 110(k)(5)—which provides states with up to 18 months to submit a SIP after EPA requests a SIP revision. While EPA may have ended its inquiry there, and provided for the states to submit the measures within 18 months of its proposed approval of the attainment demonstrations, EPA further considered that these areas were all located with the Northeast Ozone Transport Region (OTR) and determined that it was appropriate to provide these areas with additional time to work through the OTC process to determine if regional controls would be appropriate for addressing the shortfall. EPA believed that allowing these states until 2001 to adopt these additional measures would not undercut their attainment dates of November 2005 or 2007. EPA still believes that this is a reasonable schedule for the states to submit adopted control measures that will achieve the additional necessary reductions.

The enforceable commitments submitted by Delaware for the Philadelphia nonattainment area, in conjunction with its other SIP measures and other sources of emissions reductions, constitute the required demonstration of attainment. EPA believes that the delay in submittal of the final rules is permissible under section 110(k)(3) because the State has obligated itself to submit the rules by specified short-term dates, and that obligation is enforceable by EPA and the public. Moreover, as discussed in the December 16, 1999 proposal, its Technical Support Document (TSD), and Sections I.G. and I.H. of this document, the SIP submittal approved today contains major substantive components submitted as adopted regulations and enforceable orders.

The comment is not germane to Delaware's Post 1996 ROP plans. The State of Delaware is relying only on NO_X and VOC emission reductions achieved within its portion of the Philadelphia nonattainment area for demonstrating ROP from 1996 through the 2005 attainment year. These reductions result from the implementation of fully promulgated Federal or fully adopted and SIP-approved state measures.

D. RACM (Including Transportation Control Measures)

Comment: Several commenters have stated that there is no evidence in several states that they have adopted reasonably available control measures (RACM) or that the SIPs have provided for attainment as expeditiously as practicable. Specifically, the lack of Transportation Control Measures (TCMs) was cited in several comments, but commenters also raised concerns about potential stationary source controls. One commenter stated that mobile source emission budgets in the plans are by definition inadequate because the SIPs do not demonstrate timely attainment or contain the emissions reductions required for all RACM. That commenter claims that EPA may not find adequate a motor vehicle emission budget (MVEB) that is derived from a SIP that is inadequate for the purpose for which it is submitted.

The commenter alleges that none of the MVEBs submitted by the states that EPA is considering for adequacy is consistent with the level of emissions achieved by implementation of all RACM; nor are they derived from SIPs that provide for attainment. Some commenters stated that for measures that are not adopted into the SIP, the state must provide a justification for why they were determined not to be RACM.

Response: EPA reviewed the initial SIP submittals for the Philadelphia area and determined that they did not include sufficient documentation concerning available RACM measures. For all of the severe areas for which EPA proposed approval in December 1999, EPA consequently issued policy guidance memorandum to have these states address the RACM requirement through an additional SIP submittal. (Memorandum of December 14, 2000, from John S. Seitz, Director, Office of Air Quality Planning and Standards, re: ''Additional Submission on RACM from States with Severe One-hour Ozone Nonattainment Area SIPs'').

On August 3, 2001, Delaware submitted its proposed analysis and determination that there are no additional reasonably available control measures (RACM) as a supplement to its 2005 attainment demonstration for the Philadelphia area and requested that EPA approve it as a SIP revision using a form of Federal rulemaking known as parallel-processing. On September 7, 2001, EPA published a SNPR on the attainment demonstration (66 FR 46755). In that supplemental notice, we proposed approval of Delaware's RACM analysis and determination. See Section I.E. of this document. We received no comments on that SNPR.

That proposed approval was done under a procedure called parallel processing, whereby EPA proposes rulemaking action concurrently with the state's procedures for amending its SIP. If the final, adopted revision is substantially changed from the version EPA proposed to approve, and which was available for public review during EPA's comment period, EPA will evaluate those changes and may publish another supplemental notice of proposed rulemaking. If no substantial changes are made, EPA will publish a final rulemaking notice on the revision. The final rulemaking action by EPA will occur only after the SIP revision has been adopted by the state and submitted formally to EPA for incorporation into the SIP.

On October 9, 2001, the State of Delaware supplemented its original attainment demonstration SIP with a formal submittal of an analysis of RACM. EPA has determined that there are no changes between Delaware's formally submitted RACM analysis and the proposed version for which we proposed approval on September 7, 2001. We received no comments on the September 7, 2001 SNPR. EPA concluded that Delaware's 2005 attainment demonstration SIP for the Philadelphia area, as formally supplemented on October 9, 2001, meets the requirement for RACM.

Section 172(c)(1) of the Act requires SIPs to contain RACM and provides for areas to attain as expeditiously as practicable. EPA has previously provided guidance interpreting the requirements of 172(c)(1). See 57 FR 13498, 13560. In that guidance, EPA indicated its interpretation that potentially available measures that would not advance the attainment date for an area would not be considered RACM. EPA also indicated in that 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 their SIP submittals whether measures considered were reasonably available or not, and if measures are reasonably available they must be adopted as RACM. Finally, EPA indicated that states could reject measures as not being RACM because they would not advance the attainment date, would cause substantial widespread and long-term adverse impacts, would be economically or technologically infeasible, or would be unavailable based on local considerations, including costs. EPA also issued a recent memorandum re-confirming the principles in the earlier guidance, entitled, ''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. Web site: *www.epa.gov/ttn/oarpg/t1pgm.html.*

The analysis submitted by the Delaware on October 9, 2001, as a supplement to its attainment demonstration SIP for the Philadelphia area, addresses the RACM requirement. Delaware has examined a wide variety of potential stationary source and mobile source controls. The stationary and area source controls that were considered were limits on area source categories not covered by a control technique guideline (CTG), e.g., motor vehicle refinishing, and surface/cleaning degreasing; rule effectiveness improvements; expanding the applicability of VOC RACT limits to sources smaller than those mandated under the CTG; ''beyond RACT'' controls on major stationary sources of nitrogen oxides (NO_X); and other potential measures. The mobile source control measures considered included measures such as the national low emission vehicle program; high occupancy vehicle (HOV) lanes; employer based programs; trip reduction ordinances; bicycle and pedestrian improvements; programs to restrict extended idling of vehicles; early retirement of older motor vehicles; traffic flow improvements; and alternative fuel vehicles. Delaware considered an extensive list of potential control measures and chose measures for implementation which went beyond the Federally mandated controls, which were found to be cost effective and technologically feasible. From the list of measures considered, the rules and measures adopted and submitted by Delaware include the following:

(1) Delaware has adopted, and EPA has SIP-approved, a rule for vehicle refinishing. The rule includes VOC content limits for motor vehicle refinishing coatings at least equivalent to the Federal requirements and required compliance with this rule in 1996 versus in 1998 as required under the Federal rule.

(2) Delaware has adopted, and EPA has SIP approved, a rule for control of VOC emissions from offset lithographic printing operations.

(3) Delaware has adopted, and EPA has SIP approved, a rule for control of VOC emissions from aerospace coating operations with an applicability threshold well below that required by the applicable CTG.

(4) Delaware has adopted, and EPA has SIP approved, a rule for control of VOC emissions from graphic arts operations (packaging rotogravure, publication rotogravure, or flexographic printing press) with an applicability threshold well below that required by the applicable CTG.

(5) Delaware has adopted, and EPA has SIP approved, a rule for control of VOC emissions from use of organic cleaning solvents that includes additional requirements beyond those of applicable CTG for surface cleaning and degreasing.

(6) Delaware has adopted, and EPA has SIP approved, a rule requiring the sale of vehicles under the national low-emission vehicle program (NLEV).

(7) Delaware has adopted, and EPA has SIP approved, a rule to implement Phase II NO_X controls under the OTC MOU. This rule established a fixed cap

on ozone-season NO_X emissions from major point sources of NO_X. The rule grants each source a fixed number of NO_X allowances, applies state-wide, and requires compliance during the ozone season. The implementation of this rule commenced May 1, 1999 in Delaware and reduces NO_X emissions both inside and outside the Philadelphia area.

(8) Delaware has adopted, and EPA has SIP approved, a rule to implement the NO_X SIP call. Delaware's rule requires compliance commencing with the start of the 2003 ozone season.

Other potential measures are not considered to be cost effective or are considered to have implementation difficulties due to the intensive and costly effort that would be involved in regulating numerous, small area source categories. These explanations are provided in further detail in the docket for this rulemaking. Delaware concluded that a number of potential transportation control measures were considered feasible, but would not, in aggregate, advance the attainment date.

Although EPA does not believe that section 172(c)(1) requires implementation of additional measures for the Philadelphia area, this conclusion is not necessarily valid for other areas. Thus, a determination of RACM is necessary on a case-by-case basis and will depend on the circumstances for the individual area. In addition, if in the future EPA moves forward to implement another ozone standard, this RACM analysis would not control what is RACM for these or any other areas for that other ozone standard.

Also, EPA has long advocated that states consider the kinds of control measures that the commenters have suggested, and EPA has indeed provided guidance on those measures. See, *e.g., www.epa.gov/otaq/transp.htm.* in order to demonstrate that they will attain the one-hour ozone NAAQS as expeditiously as practicable, some areas may need to consider and adopt a number of measures, including the kind that Delaware itself evaluated in its RACM analysis, that even collectively do not result in many emission reductions. Furthermore, EPA encourages areas to implement technically available and economically feasible measures to achieve emissions reductions in the short term, even if such measures do not advance the attainment date, since such measures will likely improve air quality. Also, over time, emission control measures that may not be RACM now for an area may ultimately become feasible for the same area due to advances in control technology or more cost-effective implementation techniques. Thus, areas should continue to assess the state of control technology as they make progress toward attainment and consider new control technologies that may in fact result in more expeditious improvement in air quality.

Because EPA is finding that the SIP meets the Act's requirement for RACM and that there are no additional reasonably available control measures that can advance the attainment date. EPA concludes that the attainment date being approved is as expeditiously as practicable.

EPA previously responded to comments concerning the adequacy of MVEBs when EPA took final action determining the budgets adequate and does not address those issues again here. The responses are found at *www.epa.gov/oms/transp/conform/pastsips.htm.*

E. Adequacy of Motor Vehicle Emissions Budgets

Comment: We received a number of comments about the process and substance of EPA's review of the adequacy of motor vehicle emissions budgets for transportation conformity purposes.

Response: EPA's adequacy process for these SIPs has been completed, and we have found the motor vehicle emissions budgets in all of these SIPs to be adequate. We have already responded to any comments related to adequacy when we issued our adequacy findings, and therefore we are not listing the individual comments or responding to them here. Our findings of adequacy and responses to comments can be accessed at *www.epa.gov/otaq/traq* (once there, click on the ''conformity'' button). At the Web site, EPA regional contacts are identified.

F. Motor Vehicle Emissions Inventory

Comment: Several commenters stated that the motor vehicle emissions inventory is not current, particularly with respect to the fleet mix. Commenters stated that the fleet mix does not accurately reflect the growing proportion of sport utility vehicles and gasoline trucks, which pollute more than conventional cars. Also, a commenter stated that EPA and states have not followed a consistent practice in updating SIP modeling to account for changes in vehicle fleets. For these reasons, commenters recommend disapproving the SIPs.

Response: All of the SIPs on which we are taking final action are based on the most recent vehicle registration data available at the time the SIP was submitted. The SIPs use the same vehicle fleet characteristics that were used in the most recent periodic inventory update. The Delaware's SIP is based on vehicle registration data from 1994, which is the most recent data available at the time the SIP was prepared and submitted. EPA requires the most recent available data to be used, but we do not require it to be updated on a specific schedule. Therefore, different SIPs base their fleet mix on different years of data. Our guidance does not suggest that SIPs should be disapproved on this basis. Nevertheless, we do expect that revisions to these SIPs that are submitted using MOBILE6 (as required in those cases where the SIP is relying on emissions reductions from the Tier 2 standards) will use updated vehicle registration data appropriate for use with MOBILE6, whether it is updated local data or the updated national default data that will be part of MOBILE6.

G. VOC Emission Reductions

Comment: For states that need additional VOC reductions, one commenter recommends a process to achieve these VOC emission reductions, which involves the use of HFC–152a (1,1 difluoroethane) as the blowing agent in manufacturing of polystyrene foam products such as food trays and egg cartons. The commenter states that HFC–152a could be used instead of hydrocarbons, a known pollutant, as a blowing agent. Use of HFC–152a, which is classified as VOC exempt, would eliminate nationwide the entire 25,000 tons/year of VOC emissions from this industry.

Response: EPA has met with the commenter and has discussed the technology described by the company to reduce VOC emissions from polystyrene foam blowing through the use of HFC–152a (1,1 difluoroethane), which is a VOC exempt compound, as a blowing agent. Since the HFC–152a is VOC exempt, its use would give a VOC reduction compared to the use of VOCs such as pentane or butane as a blowing agent. However, EPA has not studied this technology exhaustively. It is each state's prerogative to specify which measures it will adopt in order to achieve the additional VOC reductions it needs. In evaluating the use of HFC–152a, states may want to consider claims that products made with this blowing agent are comparable in quality to products made with other blowing agents. Also the question of the over-all long term environmental effect of encouraging emissions of fluorine compounds would be relevant to consider. This is a technology which

states may want to consider, but ultimately, the decision of whether to require this particular technology to achieve the necessary VOC emissions reductions must be made by each affected state. Finally, EPA notes that under the significant new alternatives policy (SNAP) program, created under the Act, section 612, EPA has identified acceptable foam blowing agents man of which are not VOCs *(www.epa.gov/ozone/title6/snap/).*

H. Credit for Measures Not Fully Implemented

Comment: States should not be given credit for measures that are not fully implemented. For example, the states are being given full credit for Federal coating, refinishing and consumer product rules that have been delayed or weakened.

Response: Architectural and Industrial Maintenance (AIM) Coatings: On March 22, 1995 EPA issued a memorandum [7] that provided that states could claim a 20 percent reduction in VOC emissions from the AIM coatings category in ROP and attainment plans based on the anticipated promulgation of a national AIM coatings rule. In developing the attainment and ROP SIPs for their nonattainment areas, states relied on this memorandum to estimate emission reductions from the anticipated national AIM rule. EPA promulgated the final AIM rule in September 1998, codified at 40 CFR Part 59 Subpart D. In the preamble to EPA's final AIM coatings regulation, EPA estimated that the regulation will result in 20 percent reduction of nationwide VOC emissions from AIM coatings categories (63 FR 48855). The estimated VOC reductions from the final AIM rule resulted in the same level as those estimated in the March 1995 EPA policy memorandum.

In accordance with EPA's final regulation, states have assumed a 20 percent reduction from AIM coatings source categories in their attainment and ROP plans. AIM coatings manufacturers were required to be in compliance with the final regulation within one year of promulgation, except for certain pesticide formulations which were given an additional year to comply. Thus all manufacturers were required to comply, at the latest, by September 2000. Industry confirmed in comments on the proposed AIM rule that 12 months between the issuance of the final rule and the compliance deadline would be sufficient to ''use up existing label stock'' and ''adjust inventories'' to conform to the rule. 63 FR 48848 (September 11, 1998). In addition, EPA determined that, after the compliance date, the volume of nonconforming products would be very low (less than one percent) and would be withdrawn from retail shelves anyway. Therefore, EPA believes that compliant coatings were in use by the fall of 1999 with full reductions to be achieved by September 2000 and that it was appropriate for the states to take credit for a 20 percent emission reduction in their SIPs.

Autobody Refinish Coatings Rule: Consistent with a November 27, 1994 EPA policy,[8] many states claimed a 37 percent reduction from this source category based on a proposed rule. However, EPA's final rule, ''National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings,'' published on September 11, 1998 (63 FR 48806), did not regulate lacquer topcoats and will result in a smaller emission reduction of around 33 percent overall nationwide. The 37 percent emission reduction from EPA's proposed rule was an estimate of the total nationwide emission reduction. Since this number is an overall national average, the actual reduction achieved in any particular area could vary depending on the level of control which already existed in the area. For example, in California the reduction from the national rule is zero because California's rules are more stringent than the national rule. In the proposed rule, the estimated percentage reduction for areas that were unregulated before the national rule was about 40 percent. However as a result of the lacquer topcoat exemption added between proposal and final rule, the reduction is now estimated to be 36 percent for previously unregulated areas. Thus, most previously unregulated areas will need to make up the approximately one percent difference between the 37 percent estimate of reductions assumed by states, following EPA guidance based on the proposal, and the 36 percent reduction actually achieved by the final rule for previously unregulated areas. EPA's best estimate of the reduction potential of the final rule was spelled out in a September 19, 1996 memorandum entitled ''Emissions Calculations for the Automobile Refinish Coatings Final Rule'' from Mark Morris to Docket No. A–95–18.

Consumer Products Rule: Consistent with a June 22, 1995 EPA guidance,[9] states claimed a 20 percent reduction from this source category based on EPA's proposed rule. The final rule, ''National Volatile Organic Compound Emission Standards for Consumer Products,'' (63 FR 48819), published on September 11, 1998, has resulted in a 20 percent reduction after the December 10, 1998 compliance date. Moreover, these reductions largely occurred by the fall of 1999. In the consumer products rule, EPA determined and the consumer products industry concurred, that a significant proportion of subject products have been reformulated in response to state regulations and in anticipation of the final rule (63 FR 48819). That is, industry reformulated the products covered by the consumer products rule in advance of the final rule. Therefore, EPA believes that complying products in accordance with the rule were in use by the fall of 1999. It was appropriate for the states to take credit for a 20 percent emission reduction for the consumer products rule in their SIPs.

I. Enforcement of Control Programs

Comment: The attainment demonstrations do not clearly set out programs for enforcement of the various control strategies relied on for emission reduction credit.

Response: In general, state enforcement, personnel and funding program elements are contained in SIP revisions previously approved by EPA under obligations set forth in section 110(a)(2)(c) of the Act. Once approved by the EPA, there is no need for states to re-adopt and resubmit their enforcement programs with each and every SIP revision generally required by other sections of the Act. In a final rulemaking action published on October 17, 1983 (48 FR 46986), EPA approved Delaware's financial and manpower resource commitments, after having proposed approval of these commitments on February 3, 1983 (48 FR 5093,5095). In addition, emission control regulations will also contain specific enforcement mechanisms, such as record keeping and reporting requirements, and may also provide for periodic state inspections and reviews of the affected sources. EPA's review of these regulations includes review of the enforceability of the regulations. Rules

[7] ''Credit for the 15 Percent Rate-of-Progress Plans for Reductions from the Architectural and Industrial Maintenance (AIM) Coating Rules,'' March 22, 1995, from John S. Seitz, Director, Office of air Quality Planning and Standards to Air Division Directors, Regions I–X.

[8] ''Credit for the 15 Percent Rate-of-Progress Plans for Reductions from the Architectural and Industrial Maintenance (AIM) Coating Rule and the Autobody Refinishing Rule,'' November 29, 1994, John S. Seitz, Director OAQPS, to Air Division Directors, Regions I–X.

[9] ''Regulatory Schedule for Consumer and Commercial Products under Section 183(e) of the Clean Air Act,'' June 22, 1995, John S. Seitz, Director OAQPS, to Air Division Directors, Regions I–X.

that are not enforceable are generally not approved by EPA. To the extent that the ozone attainment demonstration depends on specific state emission control regulations, these individual regulations have undergone review by the EPA in past approval actions.

J. MOBILE6 and the Motor Vehicle Emissions Budgets (MVEBs)

Comment 1: One commenter generally supports a policy of requiring motor vehicle emissions budgets to be recalculated when revised MOBILE models are released.

Response 1: The attainment demonstration SIPs that rely on Tier 2 emission reduction credit contain commitments to revise the motor vehicle emissions budgets after MOBILE6 is released. EPA is approving Delaware's commitment in this final rulemaking.

Comment 2: The revised budgets calculated using MOBILE6 will likely be submitted after the MOBILE5 budgets have already been approved. EPA's policy is that submitted SIPs may not replace approved SIPs.

Response 2: This is the reason that EPA proposed in the July 28, 2000, SNPR (65 FR 46383) that the approval of the MOBILE5 budgets for conformity purposes would last only until MOBILE6 budgets had been submitted and found adequate. In this way, the MOBILE6 budgets can apply for conformity purposes as soon as they are found adequate. See the discussion at Section I.B. of this document.

Comment 3: If a state submits additional control measures that affect the motor vehicle emissions budget, but does not submit a revised motor vehicle emissions budget, EPA should not approve the attainment demonstration.

Response 3: EPA agrees. The motor vehicle emissions budgets for the Delaware portion of the Philadelphia area attainment demonstration reflect the motor vehicle control measures in the attainment demonstration. In addition, Delaware has committed to submit new budgets as a revision to the attainment SIP consistent with any new measures submitted to fill any shortfall, if the additional control measures affect on-road motor vehicle emissions. EPA is approving that commitment in this final rulemaking. See the discussion at Section I.B. of this document.

Comment 4: EPA should make it clear that the motor vehicle emissions budgets to be used for conformity purposes will be determined from the total motor vehicle emissions reductions required in the SIP, even if the SIP does not explicitly quantify a revised motor vehicle emissions budget.

Response 4: EPA will not approve SIPs without motor vehicle emissions budgets that are explicitly quantified for conformity purposes. Delaware's attainment demonstration SIP for the Philadelphia area contains explicitly quantified motor vehicle emissions budgets for its portion of the area which have been even further explicitly quantified as sub-budgets for each of Kent and New Castle Counties. See Section I.I.(1) of this document.

Comment 5: If a state fails to follow through on its commitment to submit the revised motor vehicle emissions budgets using MOBILE6, EPA could make a finding of failure to submit a portion of a SIP, which would trigger a sanctions clock under section 179 of the Act.

Response 5: We agree that if a state fails to meet its SIP-approved commitment, EPA could make a finding of failure to implement the SIP, which would start a sanctions clock under section 179 of the Act.

Comment 6: If the budgets recalculated using MOBILE6 are larger than the MOBILE5 budgets, then attainment should be demonstrated again.

Response 6: As EPA proposed in its December 16, 1999 notices, we will work with states on a case-by-case basis if the new emissions estimates raise issues about the sufficiency of the attainment demonstration.

Comment 7: If the MOBILE6 budgets are smaller than the MOBILE5 budgets, the difference between the budgets should not be available for reallocation to other sources unless air quality data show that the area is attaining, and a revised attainment demonstration is submitted that demonstrates that the increased emissions are consistent with attainment and maintenance. Similarly, the MOBILE5 budgets should not be retained (while MOBILE6 is being used for conformity demonstrations) unless the above conditions are met.

Response 7: EPA agrees that if recalculation using MOBILE6 shows lower motor vehicle emissions than MOBILE5, then these motor vehicle emission reductions cannot be reallocated to other sources or assigned to the motor vehicle emissions budget as a safety margin unless the area reassesses the analysis in its attainment demonstration and shows that it will still attain. In other words, the area must assess how its original attainment demonstration is impacted by using MOBILE6 versus MOBILE5 before it reallocates any apparent motor vehicle emission reductions resulting from the use of MOBILE6. In addition, Delaware will be submitting new budgets based on MOBILE6, so the MOBILE5 budgets will not be retained in the SIP indefinitely.

K. MOBILE6 Grace Period

Comment 1: We received a comment on whether the grace period before MOBILE6 is required in conformity determinations will be consistent with the schedules for revising SIP motor vehicle emissions budgets within one or two years of MOBILE6's release.

Response 1: This comment is not germane to this rulemaking, since the MOBILE6 grace period for the conformity determinations is not explicitly tied to EPA's SIP policy and approvals. However, EPA understands that a longer grace period would allow some areas to better transition to new MOBILE6 budgets. EPA is considering the maximum two-year grace period allowed by the conformity rule, and EPA will address this in the future when the final MOBILE6 emissions model and policy guidance is released.

Comment 2: One commenter asked EPA to clarify in the final rule whether MOBILE6 will be required for conformity determinations once new MOBILE6 budgets are submitted and found adequate.

Response 2: This comment is not germane to this rulemaking. However, it is important to note that EPA intends to clarify its policy for implementing MOBILE6 in conformity determinations when the MOBILE6 model is released. EPA believes that MOBILE6 should be used in conformity determinations once new MOBILE6 budgets are found adequate.

L. Two-Year Option To Revise the MVEBs

Comment: One commenter did not prefer the additional option for a second year before the state has to revise the conformity budgets with MOBILE6 since new conformity determinations and new transportation projects could be delayed in the second year.

Response: EPA proposed the additional option to provide further flexibility in managing MOBILE6 budget revisions. The supplemental proposal did not change the original option to revise budgets within one year of MOBILE6's release. State and local governments can continue to use the one-year option, if desired, or submit a new commitment consistent with the alternative two-year option. EPA expects that state and local agencies have consulted on which option is appropriate and considered the impact on the future conformity determinations. Delaware has committed to revise its budgets within

one-year of MOBILE6's release. EPA is approving that commitment in this final rulemaking.

M. Comments Contending That Delaware's NO_X Measures Are Not Approved

Comment: We received comments asserting that credit had been assumed from measures not approved into the SIP. The comments specifically mentioned the NO_X RACT rule and the Phase II controls under the OTC's MOU. We also received comments that NO_X RACT applicability should be extended to 25 tons per year sources.

Response: EPA has approved the Delaware's NO_X RACT regulations for this area (66 FR 32231, June 14, 2001). The comment regarding extension of the applicability of RACT to 25 tons per year sources is moot because the Delaware NO_X RACT regulations's applicability threshold is 25 tons per year as is required in a severe ozone nonattainment area. EPA has fully approved Delaware's rule that implements the Phase II controls under the OTC MOU (65 FR 12481, March 9, 2000).

N. Attainment and Rate-of-Progress Demonstrations

Comment: One commenter claims that the plans fail to demonstrate emission reductions of 3 percent per year over each 3-year period between November 1999 and November 2002, and November 2002 and November 2005, as required by 42 U.S.C. section 7511a(c)(2)(B). The states have not even attempted to demonstrate compliance with these requirements, and EPA has not proposed to find that they have been met. The EPA has absolutely no authority to waive the statutory mandate for 3 percent annual reductions. The statute does not allow EPA to use the NO_X SIP call or 126 orders as an excuse for waiving ROP deadlines. The statutory ROP requirement is for emission reductions—not ambient reductions. Emission reductions in upwind states do not waive the statutory requirement for 3 percent annual emission reductions within the downwind nonattainment area.

Response: Under no condition is EPA waiving the statutory requirement for 3 percent annual emission reductions. For many areas, EPA did not propose approval of the Post-99 ROP demonstrations at the same time as EPA proposed action on the area's attainment demonstration. On August 30, 2001 (66 FR 45800), EPA proposed full approval of all of the Post-1996 ROP plans adopted by Delaware to demonstrate ROP from 1996 through the 2005 attainment year. We received no comments on that NPR. (See the discussion in Section I.B. of this document.) Delaware is only relying on NO_X and VOC reductions from within its portion of the Philadelphia nonattainment area for meeting the ROP requirements from 1996 through the 2005 attainment year. These reductions are the result of fully promulgated Federal and fully adopted and SIP-approved state measures.

O. Measures for the One Hour NAAQS and for Progress Toward the Eight Hour NAAQS

Comment: One commenter notes that EPA has been working toward promulgation of a revised eight hour ozone NAAQS because the Administrator deemed attaining the one-hour ozone NAAQS is not adequate to protect public health. Therefore, EPA must ensure that measures be implemented now that will be sufficient to meet the one hour standard and that make as much progress toward implementing the 8 hour ozone standard as the requirements of the Act and implementing regulations allow.

Response: The one hour standard remains in effect for all of these areas and the SIPs that have been submitted are for the purpose of achieving that NAAQS. Congress has provided the states with the authority to choose the measures necessary to attain the NAAQS. EPA cannot second guess a state's choice if EPA determines that the SIP meets the requirements of the Act. EPA believes that the SIPs for the severe areas meet the requirements for attainment demonstrations for the one hour standard and thus, could not disapprove them even if EPA believed other control requirements might be more effective for attaining the eighthour standard. However, EPA generally believes that emission controls implemented to attain the one hour ozone standard will be beneficial towards attainment of the eighthour ozone standard as well. This is particularly true regarding the implementation of NO_X emission controls resulting from EPA's NO_X SIP Call.

Finally, EPA notes that although the eighthour ozone standard has been adopted by the EPA, implementation of this standard has been delayed while certain aspects of the standard remain before the United States Circuit Court of Appeals. The states and the EPA have yet to define the eighthour ozone nonattainment areas and the EPA has yet to issue guidance and requirements for the implementation of the eighthour ozone standard.

III. Final Action

A. Attainment Demonstration

EPA is fully approving as meeting sections 182(c)(2) and (d) of the Act, the attainment demonstration for the Philadelphia-Wilmington-Trenton area as submitted by the State of Delaware on May 22, 1998, and amended October 8, 1998, January 24, 2000, December 20, 2000, and October 9, 2001, including its RACM analysis and determination.

B. Commitments

EPA is approving the enforceable commitments made to the attainment plan for the Philadelphia-Wilmington-Trenton severe ozone nonattainment area submitted on January 24, 2000 and revised on December 20, 2000. The enforceable commitments are to:

(1) Submit measures by October 31, 2001 for additional emission reductions as required in the attainment demonstration test, and to revise the SIP and motor vehicle emissions budgets by October 31, 2001 if the additional measures affect the motor vehicle emissions inventory,

(2) Revise the SIP and motor vehicle emission budgets using MOBILE6 within one year after it is issued, and

(3) Perform a mid-course review by December 31, 2003.

C. Post-1996 ROP Plans

(1) EPA is approving the Post-1996 ROP plans for milestone years 1999, 2002, and 2005 for the Delaware portion of the Philadelphia-Wilmington-Trenton severe ozone nonattainment area, namely Kent and New Castle Counties, which were submitted on December 29, 1997, June 17, 1999, February 3, 2000, and December 20, 2000.

(2) EPA is also approving Delaware's contingency plans for failure to meet ROP in the Delaware portion of the Philadelphia-Wilmington-Trenton severe ozone nonattainment area, namely Kent and New Castle Counties which were submitted on December 29, 1997, June 17, 1999, February 3, 2000, and December 20, 2000.

D. Mobile Budgets of the Control Strategy Plans

EPA is approving the following mobile budgets, explicitly quantified as sub-budgets for each of Kent and New Castle Counties, of the Post-96 ROP plans and the Attainment Plan:

TRANSPORTATION CONFORMITY BUDGETS FOR THE DELAWARE PORTION OF THE PHILADELPHIA AREA

Type of control strategy SIP	Year	Kent County		New Castle County		Effective date of adequacy determination
		VOC	NO_X	VOC	NO_X	
Post-1996 ROP Plan	1999	7.55	11.17	22.49	29.41	April 29, 1999 (64 FR 31217, published June 10, 1999).
Post-1996 ROP Plan	2002	6.30	9.81	18.44	27.29	June 23, 2000, (65 FR 36440, published June 8, 2000).
Post-1996 ROP Plan	2005	4.84	7.90	14.76	22.92	May 2, 2001 (66 FR 19769, published April 17, 2001).
Attainment Demonstration	2005	4.84	7.90	14.76	22.92	June 23, 2000 (65 FR 36440, published June 8, 2000).

Please note that EPA is only approving the 2005 attainment demonstration and its current budgets because Delaware has provided an enforceable commitment to revise the budgets using the MOBILE6 model within one year of EPA's release of that model. Therefore, we are limiting the duration of our approval of the current budgets only until such time as the revised budgets are found adequate. Those revised budgets will be more appropriate than the budgets we are approving for conformity purposes for the time being.

Similarly, EPA is only approving the 2005 attainment demonstration and its current budgets because Delaware provided enforceable commitments to adopt additional measures to strengthen the attainment demonstration by October 31, 2001 and to submit revised budgets by October 31, 2001 if the additional measures affect the motor vehicle emissions inventory. Therefore, we are limiting the duration of our approval of the current budgets only until such time as any such revised budgets are found adequate. Those revised budgets will be more appropriate than the budgets we are approving for conformity purposes for the time being.

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'' (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 tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action 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 Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the 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 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. 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. 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).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 28, 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 to approve the Post-1996 ROP plans and the one-hour ozone attainment demonstration SIP for the Philadelphia-Wilmington-Trenton area submitted by the State of Delaware 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, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: October 15, 2001.

James W. Newsom,

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 I—Delaware

2. Section 52.426 is amended by revising the section heading and designating the existing text as paragraph (a) and adding paragraphs (b), (c) and (d) to read as follows:

§ 52.426 Control strategy plans for attainment and rate-of-progress: ozone.

* * * * *

(b)(1) EPA approves revisions to the Delaware State Implementation Plan consisting of the Post 1996 ROP plans for milestone years 1999, 2002, and 2005 for the Delaware portion of the Philadelphia-Wilmington-Trenton severe ozone nonattainment area, namely Kent and New Castle Counties. These revisions were submitted by the Secretary of Delaware Department of Natural Resources and Environmental Control on December 29, 1997, and revised on June 17, 1999, February 3, 2000, and December 20, 2000.

(2) EPA approves Delaware's contingency plans for failure to meet ROP in the Delaware portion of the Philadelphia-Wilmington-Trenton severe ozone nonattainment area, namely Kent and New Castle Counties, for milestone years 1999, 2002 and 2005. These revisions were submitted by the Secretary of Delaware Department of Natural Resources and Environmental Control on December 29, 1997, June 17, 1999, February 3, 2000, and December 20, 2000.

(c) EPA approves the attainment demonstration SIP for the Philadelphia-Wilmington-Trenton area submitted by the Secretary of the Delaware Department of Natural Resources and Environmental Control on May 22, 1998, and amended October 8, 1998, January 24, 2000, December 20, 2000, and October 9, 2001 including its RACM analysis and determination. EPA is approving the enforceable commitments made to the attainment plan for the Philadelphia-Wilmington-Trenton severe ozone nonattainment area submitted by the Secretary of Delaware Department of Natural Resources and Environmental Control on January 24, 2000 and December 20, 2000. The enforceable commitments are to:

(1) Submit measures by October 31, 2001 for additional emission reductions as required in the attainment demonstration test, and to revise the SIP and motor vehicle emissions budgets by October 31, 2001 if the additional measures affect the motor vehicle emissions inventory,

(2) Revise the SIP and motor vehicle emission budgets using MOBILE6 within one year after it is issued, and

(3) Perform a mid-course review by December 31, 2003.

(d) EPA is approving the following mobile budgets, explicitly quantified as sub-budgets for each of Kent and New Castle Counties, of the Post-96 ROP plans and the Attainment Plan:

TRANSPORTATION CONFORMITY BUDGETS FOR THE DELAWARE PORTION OF THE PHILADELPHIA AREA

Type of control strategy SIP	Year	Kent County		New Castle County		Effective Date of Adequacy Determination
		VOC	NO_X	VOC	NO_X	
Post-1996 ROP Plan	1999	7.55	11.17	22.49	29.41	April 29, 1999 (64 FR 31217, published June 10, 1999).
Post-1996 ROP Plan	2002	6.30	9.81	18.44	27.29	June 23, 2000, (65 FR 36440, published June 8, 2000).
Post-1996 ROP Plan	2005	4.84	7.90	14.76	22.92	May 2, 2001 (66 FR 19769, published April 17, 2001).
Attainment Demonstration	2005	4.84	7.90	14.76	22.92	June 23, 2000, (65 FR 36440, published June 8, 2000).

(1) EPA is only approving the 2005 attainment demonstration and its current budgets because Delaware has provided an enforceable commitment to revise the budgets using the MOBILE6 model within one year of EPA's release of that model. Therefore, EPA is limiting the duration of its approval of the current budgets only until such time as the revised budgets are found adequate. Those revised budgets will be more appropriate than the budgets EPA is approving for conformity purposes for the time being.

(2) Similarly, EPA is only approving the attainment demonstration and its current budgets because Delaware has provided enforceable commitments to adopt additional measures to strengthen the attainment demonstration by October 31, 2001 and to submit revised budgets by October 31, 2001 if the additional measures affect the motor vehicle emissions inventory. Therefore, EPA is limiting the duration of its approval of the current budgets only until such time as any such revised budgets are found adequate. Those revised budgets will be more appropriate than the budgets EPA is approving for conformity purposes for the time being.

[FR Doc. 01–26768 Filed 10–26–01; 8:45 am]

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Monday,
October 29, 2001

Part IV

Department of Transportation

Office of the Secretary

14 CFR Part 330

Procedures for Compensation of Air Carriers; Final Rule

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 330

[Docket OST–2001–10885]

RIN 2105–AD06

Procedures for Compensation of Air Carriers

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule; request for comments.

SUMMARY: On September 22, 2001, President Bush signed into law the Air Transportation Safety and System Stabilization Act (''the Act''). The Act makes available to the President funds to compensate air carriers, as defined in the Act, for direct losses suffered as a result of any Federal ground stop order and incremental losses beginning September 11, 2001, and ending December 31, 2001, resulting from the September 11 terrorist attacks on the United States. In order to fulfill Congress' intent to expeditiously provide compensation to eligible air carriers, the Department used procedures set out in Program Guidance Letters to make initial payments amounting to about 50 percent of the authorized funds. This rule establishes application procedures for air carriers interested in requesting compensation under this statute.

DATES: This rule is effective October 29, 2001. Comments should be received by November 13, 2001.

ADDRESSES: Interested persons should send comments to Docket Clerk, Docket OST–2001–10885, Department of Transportation, 400 7th Street, SW, Room PL–401, Washington, DC 20590. Applicants for compensation should NOT send their applications to the docket; the Department will accept only those complete applications sent to the address listed in the text of this rule. We request that, in order to minimize burdens on the dockets staff, commenters send three copies of their comments to the docket. Commenters wishing to have their submissions acknowledged should include a stamped, self-addressed postcard with their comments. The Docket Clerk will date stamp the postcard and return it to the commenter. Comments will be available for inspection at the above address from 10 a.m. to 5 p.m., Monday through Friday. Comments also may be sent electronically to the Dockets Management System (DMS) at the following Internet address: *http://dms.dot.gov/*. Commenters who wish to file comments electronically should follow the instructions on the DMS web site. Interested persons can also review comments through this same web site.

FOR FURTHER INFORMATION CONTACT: Steven Hatley, U.S. Department of Transportation, Office of International Aviation, 400 7th Street, SW., Room 6402, Washington DC, 20590. Telephone 202–366–1213.

SUPPLEMENTARY INFORMATION: As a consequence of the terrorist attacks on the United States on September 11, 2001, the U.S. commercial aviation industry suffered severe financial losses. These losses placed the financial survival of many air carriers at risk. Acting rapidly to preserve the continued viability of the U.S. air transportation system, President Bush and Congress enacted the Air Transportation Safety and System Stabilization Act (''the Act''), Public Law 107–42.

The Act provided financial assistance to air carriers to address a short-term liquidity crisis in the wake of the September 11 attacks. This primary objective of the Act was clearly recognized by members of both the House and Senate. See, for example, statements of Representatives Frost, Lampson, Buyer, Green and Dicks (*Daily Congressional Record*, September 21, 2001, at H5884–5891) and Senators Bond, Hutchinson, Rockefeller, Boxer, McCain, Feingold, and Domenici (*Daily Congressional Record,* September 21, 2001, at S9589—9597). The Act provided financial assistance in two main ways. First, the Act authorized $5 billion in compensation to air carriers for direct and incremental losses incurred as a result of the September 11 attacks. Second, the Act authorized the issuance of up to $10 billion in loan guarantees to air carriers. This regulation concerns only the first type of financial assistance. The latter is covered by regulations issued on October 5, 2001 (66 FR 52270, October 12, 2001), by the Office of Management and Budget (14 CFR part 1300).

Under section 101(a)(2)(A–B) of the Act, a total of $5 billion in compensation is provided for ''direct losses incurred beginning on September 11, 2001, by air carriers as a result of any Federal ground stop order issued by the Secretary of Transportation or any subsequent order which continues or renews such stoppage; and the incremental losses incurred beginning September 11, 2001 and ending December 31, 2001, by air carriers as a direct result of such attacks.'' The Department of Transportation has already disbursed initial estimated payments of nearly $2.5 billion of the $5 billion amount that Congress authorized, using procedures set forth in the Department's Program Guidance Letters that were widely distributed and posted on the Department's web site. These payments represent about one-half of the sums estimated to be due to air carriers, and they are subject to adjustment and audit. Applicants can still receive the full amounts for which they are eligible, even if they did not apply previously. However, *all* applicants should note the strict 14-day (general) or 28-day (air taxi) application deadlines, as explained below.

Section-by-Section Analysis

Section 330.1 What Is the Purpose of This Part?

This section states the purpose of part 330, which is to carry out the statutory provisions of the Act with respect to compensating air carriers.

Section 330.3 What Do the Terms Used in This Part Mean?

This definitions section incorporates terms from the Act or other existing sources. The definition of ''air carrier'' in the Act refers to any U.S. air carrier, as defined in 49 U.S.C. 40102. This statutory definition is ''a citizen of the United States undertaking, by any means, directly or indirectly, to provide air transportation.'' This definition includes not only entities that operate aircraft (''direct'' air carriers) but also other entities that are involved in air transportation but do not operate aircraft (''indirect'' air carriers, such as freight forwarders and some public charter operators). As noted in section 330.11, not all ''air carriers'' are eligible for compensation, however.

The definitions of available seat-miles (ASMs) and revenue ton-miles (RTMs) are derived from the air carrier reporting requirements of 14 CFR part 241. We note that, under the statutory formula of section 103(b)(2) of the Act, combined cargo/passenger flights are eligible for compensation only on the basis of ASMs. Only RTMs flown on all-cargo freighter aircraft are eligible for compensation on the basis of RTMs.

The definition of ''air taxi operator'' is an air carrier, other than a commuter air carrier, that holds authority under 14 CFR part 298 and 14 CFR part 121 or 135. We believe that the Congress intended that air taxis be eligible for compensation, as long as they are able to accurately report the ASMs they have flown or the RTMs they have transported, as well as clearly document direct and incremental losses resulting from the attacks, to the Department. We are including provisions in the

regulation to facilitate their participation in the program. At the same time, we understand that many air taxi companies are likely to have flown relatively few ASMs or RTMs, compared to the universe of ASMs or RTMs flown by the entire industry. For example, in CY 2000, the industry flew over 973 billion ASMs. Consequently, the statutory formula may result in very small amounts of compensation being payable to companies that fly relatively few ASMs.

Section 330.5 What Funds Will the Department Distribute Under This Part?

The Department plans to disburse the remaining funds available under the Act in two additional installments. In the second installment, covered by the procedures of Part 330, we plan to disburse an amount that, cumulatively with the funds we have already disbursed, will not exceed 85 percent of the amount authorized for carriers. The Department is not establishing, in this regulation, a specific percentage of authorized funds that will be disbursed as part of this second installment. The Department anticipates having a clearer picture of the collective losses of air carriers after we review the submissions from carriers under this rule.

We will subsequently establish a uniform across-the-board percentage figure that will determine the percentage of authorized funds that all eligible carriers will receive in this second installment. The Department wishes to avoid any situation in which a carrier is ''overpaid,'' resulting in our having to recoup payments from a carrier.

The timing of the third installment must comport with the statutory directive that compensation relate to actual losses ''incurred'' through the end of December 2001. The Department will announce at a later date the procedures applicable to the third installment.

Section 330.7 How Much of An Eligible Air Carrier's Estimated Compensation Will Be Distributed Under This Part?

Consistent with section 330.5, individual carriers will receive compensation not to exceed 85 percent of the estimated compensation for which they demonstrate that they are eligible, cumulatively with payments they have previously received. The amount will depend on the percentage amount of total available compensation the Department determines to make available through this second installment. As the example in the rule text points out, a carrier that had already received 50 percent of the estimated compensation for which it is eligible would receive an additional 35 percent as part of the second installment, if the Department had determined that all carriers would receive 85 percent of their estimated compensation through the second installment.

We emphasize that carriers will only receive compensation for which they demonstrate they are eligible. To be eligible to receive any compensation at all, an air carrier must demonstrate to the satisfaction of the Department that it has actually incurred direct or incremental losses as defined in the Act. The burden of proof with respect to eligibility rests with carriers applying for compensation.

The Department is retaining discretion to make a disbursement of funds before December 31, 2001, to individual carriers of the full amount of compensation for which they are eligible under the Act. If a carrier is able to demonstrate to the satisfaction of the Department, before December 31, 2001, that it has already suffered actual losses that exceed the formula amount of compensation for which it demonstrates and documents it is eligible in accordance with the requirements set forth in this rule, the Department could disburse the complete amount of compensation for which the carrier is eligible under the statutory formula without waiting for December 31.

A carrier which requests disbursement of a final installment before December 31, 2001 must submit an independent auditor's review of the reasonableness and accuracy of its claim of actual losses for the period of the claim, a forecast for the same period which was prepared before September 11, 2001, and an independent auditor's review of the reasonableness and accuracy of its forecasts and data. The consideration of requests for final payment before December 31, 2001 is contingent upon the Department's ability to establish a fixed, comprehensive total of the ASMs and RTMs flown by all eligible air carriers during the relevant period to be used as the final basis for the total compensation formula for all eligible air carriers as established in the Act.

Section 330.9 What Are the Limits on Compensation to Air Carriers?

This section restates the Act's provision that a carrier is eligible for the lesser of its direct and incremental losses, as defined in the Act, or the amount calculated through the following formula, set forth in section 103(b)(2) of the Act:

(2) in the case of—

(A) flights involving passenger-only or combined passenger and cargo transportation, the product of—

(i) $4,500,000,000; and

(ii) the ratio of—

(I) the available seat miles of the carrier for the month of August 2001 as reported to the Secretary; to

(II) the total available seat miles of all such carriers for such month as reported to the Secretary; and

(B) flights involving cargo-only transportation, the product of—

(i) $500,000,000; and

(ii) the ratio of—

(I) the revenue ton miles or other auditable measure of the air carrier for cargo for the latest quarter for which data is available as reported to the Secretary; to

(II) the total revenue ton miles or other auditable measure for all such air carriers for cargo for such quarter as reported to the Secretary.

If any air carrier receives more compensation than it demonstrates to the satisfaction of the Department that it is eligible for under the Act, the carrier will be required to repay the excess amount to the Department.

Section 330.11 Which Carriers Are Eligible To Apply for Compensation Under This Part?

Direct air carriers that engage in air transportation operations, including certificated air carriers, commuter air carriers, and air taxis, are eligible to apply for compensation. Entities that are outside the definition of ''air carrier,'' such as foreign air carriers, commercial operators, travel and ticket agents, and general aviation operators (including corporate air services and flight training schools), are not.

As noted above, the general statutory definition of ''air carrier'' includes both direct and indirect air carriers. However, under the specific statutory language setting forth the ''Special Rules for Compensation,'' we believe that Congress intended compensation only for those entities that actually operate ''flights.'' Moreover, entities that actually fly aircraft were the overwhelming focus of the Congressional discussion of the purpose of compensation under the Act. A reading of the statute to extend compensation payments to other entities and individuals that do not actually fly aircraft would make it difficult, if not impossible, to distinguish among the many different kinds of contractual arrangements that exist for providing air transportation. We believe that, although a variety of air carriers and other entities suffered losses as a result of the terrorist attacks—public charter operators, travel agents, freight forwarders, employees, concessionaires,

etc.—Congress limited the Act to provide financial assistance to help keep air carriers that actually operate flights flying.

Congress designed the compensation system of § 102(b)(2) consistent with its intent in this regard. The Act provides that air carriers would be eligible to receive the lesser of the amount of their direct and incremental losses or an amount calculated by using the statutory formula. Any air carrier, direct or indirect, may be able to demonstrate direct and incremental losses. However, unless the amount of compensation that would be payable to an air carrier under the statutory formula can be calculated, there is no way of implementing Congress' direction that the lesser of direct and incremental losses on one hand, or the formula-based payment on the other, be payable to the air carrier.

The Act does not permit the Department to disburse compensation based solely on a showing of direct and incremental losses, absent the application of the formula. Doing so could permit a carrier to receive a greater amount of compensation than that to which the Act entitles it (i.e., because there would be no formula ''cap'' to limit the amount of compensation below the amount of direct and incremental damages). Such a result would be inconsistent with the Department's task of implementing the Act responsibly in accordance with the intent of Congress.

With respect to carriers providing ''*flights* involving passenger-only or combined passenger and cargo transportation'' (emphasis added), the formula is calculated based on a ratio involving an individual carrier's ASMs, as reported to the Secretary, to those for all such carriers. Indirect air carriers (e.g., public charter operators) do not report ASMs to the Department under 14 CFR parts 241 or 298. Since they do not operate aircraft, they cannot be said to have ASMs of their own at all. Indeed, the regulatory definition of ''available seat-miles'' refers in part to ''the aircraft miles *flown* on each flight stage'' (emphasis added), and indirect air carriers do not ''fly'' miles on flight stages. Any ASMs that these indirect air carriers might calculate would be duplicative of direct air carrier ASMs. For these reasons, we believe that the formula cannot be calculated for indirect air carriers, who are therefore ineligible to receive compensation. This is consistent with Congress' focus on providing compensation to carriers who actually operate aircraft.

For carriers providing ''*flights* involving cargo-only transportation'' (emphasis added), the Act calculates the formula in a similar way, with the basic measure being RTMs reported to the Department under 14 CFR part 291. The same points made above with respect to passenger-only or combined passenger/cargo carriers apply to cargo carriers as well. An indirect air carrier in the cargo transportation field, such as an air freight forwarder, does not operate flights with aircraft and neither generates nor reports RTMs. Revenue ton-miles are defined as a ton of revenue traffic ''transported'' one mile, not ''placed'' or ''contracted for.'' Any RTMs it would report would necessarily duplicate those of the direct air carrier that actually operated the flights involved. Indeed, an air freight forwarder could reasonably be viewed as a purchaser, rather than a provider, of air transportation services.

This interpretation is also consistent with the general purposes of the Act. To the extent that the compensation program helps direct air carriers remain operating, indirect air carriers such as air freight forwarders clearly benefit. Paying compensation to indirect air carriers would reduce the funds available to direct air carriers, making it more likely that direct air carriers would not get all of the compensation that would otherwise be payable to them. This could contribute to failures of direct air carriers that, in turn, would harm the interests of indirect air carriers.

Section 330.13 If An Air Carrier Received Compensation Under the Act Previously, Does it Have To Apply Now?

Section 330.15 If An Air Carrier Did Not Apply for Compensation Under the Act Previously, May it Apply For the First Time Now?

Section 330.17 Must An Air Carrier Apply for Compensation Under This Part Now To Be Eligible for Funds That Will Be Distributed in the Future?

These three related sections make a series of important points that air carriers should understand. All air carriers who want compensation under the Act must apply under this rule. This includes carriers who previously applied for and received funds from the first installment. A carrier who received funds under the first installment must submit an application under this rule even if it does not intend to seek further compensation. If a carrier did not apply for funds from the first distribution, it can apply now. Application under this part is mandatory, not only for carriers which wish to receive this second installment of compensation, but also from the third installment of funds to be distributed next year.

Section 330.21 When Must Air Carriers Apply for Compensation?

Section 330.23 To What Address Must Air Carriers Send Their Applications?

Section 330.25 What Are the Components of An Air Carrier's Application for Compensation?

These sections give air carriers, other than air taxis, 14 days from the effective date of the rule to ensure that their complete applications reach the Department. In order to facilitate the participation of air taxis, the regulation provides them 28 days. These are firm deadlines. Unless a carrier can demonstrate to the satisfaction of the Department that extremely unusual extenuating circumstances, completely beyond its control, prevented it from making a timely submission, the Department will not accept a late submission.

Likewise, the use of the address stated in the rule is mandatory. The Department will not accept applications sent elsewhere. In addition, applications must be in hard copy. Faxes and e-mails are not acceptable, because of the difficulties they create in handling large volumes of documents. In discussions with DOT staff, many carriers have indicated their intention to hand-carry applications to the Department. The Department will make arrangements to receive such packages in a way consistent with current Departmental office security procedures. Applications also must be complete, containing all the required information. The Department will not accept incomplete applications.

Section 330.27 What Information Must Certificated and Commuter Air Carriers Submit?

Section 330.29 What Information Must Air Taxi Operators Submit?

Forms 330–A, 330–B, and 330–C on which carriers must submit data to support their applications, are found in the Appendices to part 330. Carriers should note that forms for certificated and commuter passenger and combination passenger/cargo carriers are found in Appendix A, forms for certificated cargo carriers are found in Appendix B, and forms for air taxis are found in Appendix C. Certificated and commuter carriers which operate both passenger/combination aircraft and all-cargo aircraft and routinely report to the Department ASMs and RTMs separately for both types of flights and which are seeking compensation on both an ASM and an RTM basis must submit both sets of forms in Appendices A and B to seek compensation on both an ASM and

RTM basis. Financial and operational data (both actual and forecasted) must be disaggregated and correlate exclusively to one or the other type of operation.

In submitting the information on these forms, carriers must report total net income after taxes, based on application of standard corporate income tax rates, as well as other financial information. The Department has, however, tentatively determined to accept applications for compensation of losses calculated on the basis of pre-tax data. The rationale for this tentative determination is that the Act is intended to compensate air carriers for losses related to their actual operations, realized prior to taxation. Under the Act, compensation received is taxable income. The Act subjects this income to taxation at the end of the fiscal year when air carriers compute their corporate taxes, as they would had the carrier earned that income from the marketplace if the terrorist attacks had not occurred. In addition, we believe that this approach avoids prejudice to eligible air carriers based on their varied tax positions. Actual losses must be net of savings on a number of items, however (*e.g.,* fuel consumption, reductions in staff).

Section 330.31 What Data Must Air Carriers Submit Concerning ASMs or RTMs?

There are three points in this section that the Department wishes to emphasize. First, since the statute relies on ASMs and RTMs ''reported to the Secretary'' (§ 103(b)(2) of the Act), we must rely on the reports of these statistics already made to the Department. Carriers are not at liberty to modify their reports, except as directed by the Department (e.g., to correct over-reported data) and to avoid double counting or the reporting of activity by code-sharing or alliance partners.

Second, we recognize that, unlike certificated and commuter air carriers that file Form 41 or part 298–C reports, air taxis do not routinely file with the Department ASM or RTM reports or traffic, financial, and other operational data. The Department is therefore requiring additional information from air taxis that is necessary to verify their claims for compensation. We are asking such carriers to provide information about their operations with their applications for compensation which will allow for a calculation of ASMs or RTMs, consistent with Bureau of Transportation Statistics (BTS) requirements and guidance (see 14 CFR part 298). If there are any direct air carriers, other than air taxis, that legitimately have not submitted ASMs or RTMs to the Department, they would also have to provide such information.

Any air carrier that calculates its ASMs or RTMs in connection with its applications must certify under penalty of law that the calculation is accurate and must fully ''show its work'' (i.e., submit the data and assumptions on which the calculation is based and describe how the result was reached). The Department provides more detailed guidance on the form in Appendix C. The Department, after reviewing such submissions, has the discretion to modify or reject the carrier's calculation.

Third, we have been asked how the Department views the situation of carriers that operate under ''wet-lease'' arrangements. In a wet lease, a carrier (the ''lessor'') leases its aircraft and crew to another carrier (the ''lessee'') for an operation. The question arises as to whether the lessor or the lessee can claim the ASMs or RTMs resulting from the operation for purposes of an application for compensation.

The statute bases the compensation formula on ASMs or RTMs ''as reported to the Secretary.'' Consequently, the Department believes that the lessor can appropriately claim the ASMs or RTMs resulting from an operation only when that is how the ASMs or RTMs were reported to the Department, in accordance with BTS regulations and guidance. Under 14 CFR 241.25, Appendix, (m)(2)(ii), ''Wet-lease arrangements shall be reported by the lessee as though the leased aircraft and crew were part of the lessee's own fleet.'' BTS discussed this requirement in Office of Airline Information Accounting and Reporting Directive No. 217, issued July 28, 1997. This BTS guidance document stated the following:

> Under the Form 41 and T–100 traffic reporting systems, wet-lease operations are reported by a lessee as though the leased aircraft and crew were a part of the lessee's own fleet and crew. [citation to § 241.25 omitted] This principle removes the uncertainty of which carrier, the lessee or the lessor, reports the detailed traffic and financial information from a wet-lease arrangement, and precludes two carriers reporting the same traffic movement while assuring that the traffic is reported by one carrier. This principle also applies for wet-lease operations involving commuter air carriers.

This approach is consistent with the Act and other provisions of this regulation.

We are aware that section 102(b)(2)(B)(ii) of the Act provides that the formula calculation is to be based on ''revenue ton-miles *or other auditable measure* of the air carrier for the latest quarter for which data is available as reported to the Secretary'' (emphasis added). Neither the language of the statute nor its legislative history provides any information on what such an ''other auditable measure'' would be. To fulfill the purpose of the statutory formula, such a measure would have to be readily verifiable, could not be duplicative of RTMs reportable by direct air carriers, and would have to be comparable to RTMs so that it could be part of the basis for the formula ''cap'' on the compensation payable to a carrier for its direct and incremental losses. The Department also believes that any ''other auditable measure'' would have to be a measure applicable to air carriers for cargo generally. It would not be feasible to attempt to make the comparison referred to above on the basis of individual, carrier-specific measures.

The language of the statute requires the Department to apply such an ''other auditable measure'' in the same way that it applies RTMs that are ''reported to the Secretary.'' It may be possible, for example, that a calculation of RTMs, based on auditable information regarding flights actually flown by the air carrier and prepared in accordance with Bureau of Transportation Statistics regulations and guidance, but that were not required to be reported to the Secretary, could meet these criteria. On the other hand, for example, financial data evidencing losses, without regard to RTMs actually flown by the air carrier, are clearly not such a measure. The Department will review comments that propose ''other auditable measures'' and could, if warranted, add language to this rule permitting submissions by cargo carriers who actually operate aircraft based on such measures, if they meet the criteria discussed above. Because the Department does not now know of specific ''other auditable measures'' that meet the criteria for such a measure, however, we are not including any provisions to this effect in today's rule.

Section 330.33 Must Carriers Certify the Truth and Accuracy of Data They Submit?

This section provides the form of a certification that the Chief Executive Officer, Chief Financial Officer, or Chief Operating Officer, or equivalent official, of a carrier must make with respect to applications for compensation and participation in the compensation program.

Section 330.35 What Records Must Carriers Retain?

Section 330.37 Are Air Carriers That Participate in This Program Subject To Audit?

In order to maintain the Department's ability to audit the compensation program, we must require air carriers to retain a significant amount of information for review by the Department (including the Office of Inspector General), the Comptroller General, or other Federal agencies.

Carriers will have to provide an independent auditor's review of their forecasts before becoming eligible for the final installment of compensation. We also want air carriers to be aware that, before becoming eligible to receive payment from the final installment of compensation under the Act, they must report to the Department actual losses for the period September 11, 2001—December 31, 2001 that are the result of the terrorist attacks.

Carriers that can demonstrate and document to the Department's satisfaction that they suffered actual losses before December 31, 2001 that exceed the formula amount of compensation may request a final installment in CY 2001 subject to the terms and conditions discussed in connection with § 330.7 above. Carriers will have to support these reports of losses with audited financial statements or, for carriers who do not normally prepare audited financial statements, relevant tax records and supporting documents. In addition, the Department may require the carrier to provide whatever documents or other supporting data are necessary to verify the carriers' reported losses. All claims by carriers are subject to audit both by the Department (including the Office of Inspector General), the Comptroller General, or other Federal agencies.

Regulatory Analyses and Notices

This rule is an economically significant rule under Executive Order 12886, since it will facilitate the distribution of more than a billion dollars into the economy during the 12-month period following its issuance. Because of the need to move quickly to provide compensation to air carriers for the purpose of maintaining a safe, efficient, and viable commercial aviation system in the wake of the events of September 11, 2001, we are not required to provide an assessment of the potential cost and benefits of this regulatory action. The Department has determined that this rule is being issued in an emergency situation, within the meaning of Section 6(a)(3)(D) of Executive Order 12866. However, this impact is expected to be a favorable one: making these funds available to air carriers to compensate them for losses resulting from the terrorist attacks of September 11. In accordance with Section 6(a)(3)(D), this rule was submitted to the Office of Management and Budget for a brief review.

Because a notice of proposed rulemaking is not required for this rulemaking under 5 U.S.C. 553, we are not required to prepare a regulatory flexibility analysis under 5 U.S.C. 604. However, we do note that this rule may have a significant economic effect on a substantial number of small entities. Among the entities in question are air taxis, as well as some commuters and small certificated air carriers. In analyzing small entity impact for purposes of the Regulatory Flexibility Act, we believe that, to the extent that the rule impacts small air carriers, the impact will be a favorable one, since it will consist of receiving compensation. We have facilitated the participation of small entities in the program by allowing a longer application period for air taxis, which are generally the smallest carriers covered by this rule and which do not otherwise report traffic or financial data to the Department. The Department has also concluded that this rule does not have sufficient Federalism implications to warrant the consultation requirements of Executive Order 13132.

We are making this rule effective immediately, without prior opportunity for public notice and comment. Because of the need to move quickly to provide compensation to air carriers for the purpose of maintaining a safe, efficient, and viable commercial aviation system in the wake of the events of September 11, 2001, prior notice and comment would be impractical, unnecessary, and contrary to the public interest. Consequently, prior notice and comment under 5 U.S.C. 553 and delay of the effective date under 5 U.S.C. 801, *et. seq*, are not being provided. On the same basis, we have determined that there is good cause to make the rule effective immediately, rather than in 30 days. We are providing for a 14-day comment period following publication of the rule, however. The Department will subsequently respond to comments we receive.

This rule contains information collection requirements subject to the Paperwork Reduction Act (PRA), specifically the application documents that air carriers must submit to the Department to obtain compensation. The title, description, and respondent description of the information collections are shown below as well as an estimate of the annual recordkeeping and periodic reporting burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Procedures (and Forms) for Compensation of Air Carriers.

Need for Information: The information is required to administer the requirements of the Act.

Use of Information: The Department of Transportation would use the data submitted by the air carriers to determine each carrier's compensation for direct losses suffered as a result of any Federal ground stop order and incremental losses beginning September 11, 2001, and ending December 31, 2001, resulting from the September 11, 2001, terrorist attacks on the United States as defined in the Act.

Frequency: For this final rule, the Department will collect the information once, with air carriers reporting on Forms 330–A, 330–B, and 330–C.

Respondents: The respondents include an estimated 430 air carrier applicants. This number is based on an estimate of 300 air taxis (about twice as many as have contacted the Department to date in connection with this program) and 130 other carriers choosing to submit applications.

Burden Estimate: Total air carrier burden of $146,000 based on total burden hours of 5,320 for 430 applicants and a weighted average cost per hour of $27.44.

Form(s): The data would be collected on Forms 330–A, 330–B, and 330–C as shown in the Appendices to this rule.

Average Burden Hours per Respondent: A weighted average of 12.4 hours per application.

The Office of Management and Budget has approved this information collection on an emergency basis, with Control Number 2105–0546.

List of Subjects in 14 CFR Part 330

Air carriers, Grant programs—transportation, Reporting and recordkeeping requirements.

Issued this 24th day of October, 2001, at Washington, DC.

Read C. Van De Water,

Assistant Secretary for Aviation and International Affairs.

For the reasons set forth in the preamble, the Department adds a new part 330 to Title 14, Code of Federal Regulations, to read as follows:

PART 330—PROCEDURES FOR COMPENSATION OF AIR CARRIERS

Sec.

Authority: Pub. L. 107–42, 115 Stat. 230 (49 U.S.C. 40101 note).

Subpart A—General Provisions

§ 330.1 What is the purpose of this part?

The purpose of this part is to establish procedures to implement section 101(a)(2) of the Air Transportation Safety and System Stabilization Act (''the Act''), Public Law 107–42, 115 Stat. 230 (49 U.S.C. 40101 note). This statutory provision is intended to compensate air carriers for direct losses incurred as a result of the Federal ground stop order issued by the Secretary of Transportation, and any subsequent orders, following the terrorist attacks of September 11, 2001, and incremental losses incurred from September 11 through December 31, 2001, as the result of those attacks.

§ 330.3 What do the terms used in this part mean?

The following terms apply to this part:

Air carrier means any U.S. air carrier, as defined in 49 U.S.C. 40102.

Air taxi operator means an air carrier, other than a commuter air carrier, that holds authority issued under 14 CFR part 298 and 14 CFR part 121 or part 135.

Available seat-miles (ASMs) means the aircraft miles flown on each flight stage by an air carrier multiplied by the number of seats available for revenue use on that stage.

Certificated air carrier means an air carrier holding a certificate issued under 49 U.S.C. 41102 or 41103.

Commuter air carrier means an air carrier as defined in 14 CFR 298.2(e) that holds a commuter air carrier authorization issued under 49 U.S.C. 41738.

Incremental loss means a loss incurred by an air carrier in the period of September 11, 2001—December 31, 2001, as a result of the terrorist attacks on the United States of September 11, 2001. It does not include any loss that would have been incurred if the terrorist attacks on the United States of September 11, 2001, had not occurred.

Revenue ton-miles (RTMs) means the aircraft miles flown on each flight stage by the air carrier multiplied by the number of tons of revenue cargo transported on that stage. For purposes of this part, RTMs include only those resulting from all-cargo flights flown by the air carrier submitting the claim for compensation.

§ 330.5 What funds will the Department distribute under this part?

Through the regulations in this part, the Department is distributing compensation not to exceed 85 percent of the total funds available, cumulatively with funds distributed previously.

§ 330.7 How much of an eligible air carrier's estimated compensation will be distributed under this part?

(a) If you are an eligible air carrier that has not previously received compensation under the Act, you will receive compensation not to exceed 85 percent of the compensation for which you demonstrate you are eligible under the Act.

(b) If you are an eligible air carrier that has previously received compensation under the Act, you will receive compensation not to exceed 85 percent of the estimated compensation for which you demonstrate you are eligible under the Act, less the amount of estimated compensation you received previously. For example, suppose you have already received 50 percent of the estimated compensation for which you are eligible. If, under this part, the Department determined that all carriers would receive 85 percent of the compensation for which they are eligible as part of the second installment of compensation, your payment for the second installment would be an additional 35 percent of the estimated compensation for which you are eligible under the Act.

(c) If, as an air carrier, you are able to submit data, subsequent to your application under this part but before December 31, 2001, demonstrating and documenting conclusively that you have incurred actual losses as defined in section 101(a)(2) of the Act that exceed the amount of compensation for which you demonstrate you are eligible under the formula of section 103(b)(2) of the Act, the Department may disburse to you, without waiting for a submission in Calendar Year (CY) 2002, the remainder of the formula amount of compensation for which you are eligible. A carrier that requests a final installment before December 31, 2001 must submit an independent auditor's review of the reasonableness and accuracy of its claim of actual losses for the period of the claim, a forecast for the same period which was prepared before September 11, 2001, and an independent auditor's review of the reasonableness and accuracy of its forecasts and data. The consideration of requests for final payment before December 31, 2001 is contingent upon the establishment by the Department of a fixed comprehensive universe of ASMs and RTMs for all eligible air carriers to be used as the basis of the final compensation formula for all eligible air carriers as established in the Act.

§ 330.9 What are the limits on compensation to air carriers?

(a) You are eligible to receive compensation equaling the lesser of your direct and incremental losses or the amount calculated by the formula set forth in section 103(b)(2) of the Act.

(b) In the event that the compensation for which we determine you are finally eligible as provided in paragraph (a) of this section is less than the amount the Department has disbursed to you, you are required to repay the excess amount to the Department.

§ 330.11 Which carriers are eligible to apply for compensation under this part?

(a) If you are a certificated air carrier, a commuter air carrier, or an air taxi, you are eligible to apply for

compensation under Subpart B of this part.

(b) If you are an air freight forwarder (as described in 14 CFR part 296), public charter operator (as described in 14 CFR part 380), or other indirect air carrier (such as a contract bulk fare operator), you are eligible to apply for compensation under this part.

(c) If you are a foreign air carrier, commercial operator, flying club, fractional owner, general aviation operator, fixed base operator, flight school, or ticket agent, you are not eligible to apply for compensation under this part.

§ 330.13 If an air carrier received compensation under the Act previously, does it have to apply now?

Yes, if, as an air carrier, you previously received compensation under section 101(a)(2) of the Act, you must, in all cases, submit an application under this part. You must do so even if you are not seeking additional compensation.

§ 330.15 If an air carrier did not apply for compensation under the Act previously, may it apply for the first time now?

Yes, if you are an air carrier that did not apply for compensation previously under the Act, you may apply for the first time under this part.

§ 330.17 Must an air carrier apply for compensation under this part now to be eligible for funds that will be distributed in the future?

Yes, as an air carrier, you must apply under this part to be eligible to receive funds from the second and third installments of compensation. If you do not apply under this part, you will not be eligible to receive funds distributed in this or subsequent installments including those distributed in CY 2002.

Subpart B—Application Procedures

§ 330.21 When must air carriers apply for compensation?

(a) If you are an eligible air carrier other than an air taxi, you must ensure that your application for compensation reaches the Department by no later than close of business November 13, 2001.

(b) If you are an eligible air taxi, you must ensure that your application for compensation reaches the Department by no later than close of business November 26, 2001.

(c) If you do not meet the applicable deadline for submitting your application for compensation, the Department will not accept it, unless you document extremely unusual extenuating circumstances, completely beyond your control, that prevented you from submitting your application in a timely manner.

§ 330.23 To what address must air carriers send their applications?

(a) You must submit your application, and all required supporting information, in hard copy (not by fax or electronic means) to the following address:

U.S. Department of Transportation
Aviation Relief Desk (X–50)
400 7th Street, SW
Room 6401
Washington, DC 20590

(b) If your complete application is not sent to the address in paragraph (a) of this section as required in this section, the Department will not accept it.

§ 330.25 What are the components of an air carrier's application for compensation?

As an air carrier applying for compensation under this part, you must provide to the Department all materials described in §§ 330.27–330.33. The Department will not accept your application if it does not comply fully with the requirements of this subpart.

§ 330. 27 What information must certificated and commuter air carriers submit?

(a) If you are a certificated or commuter air carrier that provides passenger and/or combination passenger/cargo service and are applying for compensation under this part, you must submit Form 330–A, found in Appendix A to this part.

(b) If you are a certificated carrier operating all-cargo service and are applying for compensation under this part, you must submit Form 330–B, found in Appendix B to this part. Data for all-cargo carriers supplied on the forms in Appendix B to this part must be tied only to the airline portion of their businesses and must exclude activities usually associated with indirect air carriers or with ground services.

(c) Certificated and commuter carriers which operate both passenger/combination aircraft and all-cargo aircraft and routinely report to the Department ASMs and RTMs separately for both types of flights must submit both sets of forms in Appendices A and B to this part (Forms 330–A and 330–B) to seek compensation on both an ASM and RTM basis. Financial and operational data (both actual and forecasted) must be disaggregated and correlate exclusively to one or the other type of operation.

(d) You must include the following financial information in Part 1 of Forms 330–A and 330–B and the Operational Data as required by Part 2 of that form for the period September 11 through September 30, 2001:

(1) Your pre-September 11, 2001, profit/loss forecast for the period beginning on that date and ending September 30, 2001. This forecast must reflect seasonal reductions in capacity and the cost savings associated with such reductions. Documentation verifying that the pre-September 11, 2001, forecast was, in fact, completed before that date must also be submitted with your application.

(2) Your actual results for that same period reflecting any losses that were a direct result of the terrorist attacks of September 11, 2001.

(3) The difference between your forecast profits/losses and actual results for that period (*i.e.,* the difference between the figures in paragraphs (d) (1) and (2) of this section).

(4) The actual losses you report must be net losses, before taxes, taking into account savings from such items as reductions in passenger and cargo handling costs, fuel consumption, landing fees, revenue/traffic-related expenses (*e.g.,* commissions, food and beverage, booking fees, credit card fees), and savings of other costs due to the ground stop and subsequent schedule/capacity/staff reductions (including savings from layoffs of employees, adjusted for severance payments), as well as proceeds from business recovery insurance or other insurance payments. You must not report as losses insurance premium increases that have been or will be compensated by the Government under the Act, or other losses that have been or will be compensated by other subsidies or assistance provided by Federal, state, or local governments. You must also report after tax profit/losses as required on the forms in the Appendices to this part.

(e) You must include the following financial information in Part 3 of Form 330–A and 330–B and the Operational Data as required by Part 4 of those forms for the period October 1 through December 31, 2001:

(1) Your pre-September 11, 2001, profit/loss forecast for the period beginning October 1, 2001, and ending December 31, 2001. This forecast must reflect seasonal reductions in capacity and the cost savings associated with such reductions. Documentation verifying that the pre-September 11, 2001 forecast was, in fact, completed before that date must also be submitted with your application.

(2) Your post-September 11, 2001, forecast of incremental losses estimated to be incurred for the period beginning October 1, 2001, and ending December 31, 2001 as a result of the September 11,

2001, terrorist attacks. This forecast must incorporate all cost reductions associated with capacity reductions and furloughs you made due to the reduced demand for air service after the September 11th attacks (*e.g.,* employee pay adjustments and furloughs, changes in aircraft fleet in service, schedule and capacity changes, etc.).

(3) The difference between your pre-September 11 forecast profit-loss forecast for the October 1—December 31, 2001, period and your post-September 11 forecast for incremental losses for that period (i.e., the difference between the figures in paragraphs (e) (1) and (2) of this section).

(f) Estimated losses you report for the October 1—December 31 period must be net losses, before taxes, taking into account savings from such items as reductions in passenger and cargo handling costs, fuel consumption, landing fees, revenue/traffic-related expenses (*e.g.*, commissions, food and beverage, booking fees, credit card fees), and savings of other costs due to the ground stop and subsequent schedule/capacity/staff reductions (including savings from layoffs of employees, adjusted for severance payments), as well as proceeds from business recovery insurance or other insurance payments. You must not report as losses insurance premium increases that have been or will be compensated by the Government under the Act, or other losses that have been or will be compensated by other subsidies or assistance provided by Federal, state, or local governments. You must also report after tax profit/losses as required on the forms in the Appendices to this part.

§ 330.29 What information must air taxi operators submit on Form 330–C?

Air taxi operators are required to complete Form 330–C as shown in Appendix C to this part. Explanatory notes are included on that Form.

§ 330.31 What data must air carriers submit concerning ASMs or RTMs?

(a) Except as provided in paragraph (c) of this section, if you are applying for compensation as a passenger or combination passenger/cargo carrier, you must have submitted your August 2001 total completed ASM report to the Department for your systemwide air service (*e.g.,* scheduled, non-scheduled, foreign, and domestic).

(b) Except as provided in paragraph (c) of this section, if you are applying for compensation as an all-cargo carrier, you must have submitted your RTM reports to the Department for the second calendar quarter of 2001.

(c) If you have not reported ASMs or RTMs as provided in paragraphs (a) and (b) of this section, you may submit your calculation of ASMs or RTMs to the Department with your application. Your calculation must include only your own completed flights, and not flights flown for you by other air carriers. You must certify the accuracy of this calculation and submit with your application the data and assumptions on which the calculation is based. After reviewing your submission, the Department may modify or reject your calculation.

(d) In calculating and submitting ASMs and RTMs for purposes of this section, there are certain things you must not do:

(1) Except as necessary to comply with paragraphs (d)(2) and (d)(3) of this section or at the direction of the Department, you must not alter the ASM or RTM reports you earlier submitted to the Department or add previously unreported ASMs or RTMs to your total. Your ASMs or RTMs for purposes of this part are as you have reported them to the Department according to existing standards, requirements, and methodologies established by the Office of Airline Information (Bureau of Transportation Statistics).

(2) You must not include ASMs or RTMs resulting from operations by your code-sharing or alliance partners.

(3) You must not include ASMs or RTMs that are reported by or attributable to flights by another carrier.

(4) If you are an air carrier that ''wet leases'' aircraft and crews to other carriers, your calculations and submissions of ASMs and RTMs must be based on ASMs or RTMs as reported to the Secretary in accordance with previously established reporting requirements of the Bureau of Transportation Statistics (see paragraphs (a) and (b) of this section). Like other carriers, you must demonstrate your losses through the data submitted in order to be eligible for compensation.

§ 330.33 Must carriers certify the truth and accuracy of data they submit?

Yes, with respect to all information submitted or retained under §§ 330.27–330.31 and 330.35, your Chief Executive Officer (CEO), Chief Financial Officer (CFO), or Chief Operating Officer (COO) or, if those titles are not used, the equivalent officer, must certify that the submitted information was prepared under his or her supervision and is true and accurate, under penalty of law.

§ 330.35 What records must carriers retain?

As an air carrier that applies for compensation under this part, you must retain records as follows:

(a) You must retain all books, records, and other source and summary documentation supporting your claims for compensation of direct and incremental losses pursuant to Sections 101, 103, and 106 of the Act. This requirement includes, but is not limited to, the following:

(1) You must retain supporting evidence and documentation demonstrating the validity of the data you provide under §§ 330.27–330.31.

(2) You must retain documentation verifying that your pre-September 11, 2001, forecast was the most recent forecast available to that date.

(3) You must also retain documentation outlining the assumptions made for all forecasts and the source of the data and other inputs used in making the forecasts.

(4) You must obtain and retain all reports, working papers, and supporting documentation pertaining to audits or review conducted by independent auditors under the requirements of this part.

(b) You must preserve and maintain this documentation in a manner that readily permits its audit and examination by representatives of the Department of Transportation (including the Office of the Inspector General), the Comptroller General of the United States, or other Federal agencies.

(c) You must retain this documentation for five years.

(d) You must make all requested data available within one week from a request by the Department of Transportation (including the Office of the Inspector General), the Comptroller General of the United States, or other Federal agencies.

§ 330.37 Are carriers which participate in this program subject to audit?

(a) All payments you receive from the Department of Transportation under this program are subject to audit. All information you submit with your applications and all records and documentation that you retain are also subject to audit.

(b) Before you are eligible to receive payment from the final installment of compensation under the Act, there must be an independent auditor's review of the reasonableness and accuracy of your forecasts and data. You must submit the results of this audit to the Department with your application for payment of the final installment.

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Appendix A to Part 330—Forms for Certificated and Commuter Air Carriers

FORM 330-A
Page 1 of 5

AIR TRANSPORTATION SAFETY AND SYSTEM STABILIZATION ACT

APPLICATION FOR COMPENSATION FOR CERTIFICATED AND COMMUTER AIR CARRIERS (PROVIDING PASSENGER AND COMBINATION PASSENGER/CARGO SERVICE)

NAME, ADDRESS AND TELEPHONE NUMBER OF AIR CARRIER	
TYPE OF DOT ECONOMIC AUTHORITY HELD	
COMPENSATION AMOUNT RECEIVED TO DATE UNDER SECTION 101(A)(2) OF THE ACT	

PART 1: FORECASTED & ACTUAL LOSSES FOR THE PERIOD

SEPTEMBER 11, 2001 TO SEPTEMBER 30, 2001

FINANCIAL DATA
(in whole dollars)

Passenger Carrier Financial Data	Pre 9-11-01 Forecast for the Period 9-11-01 through 9-30-01	Actual Results for the Period 9-11-01 through 9-30-01	Difference Between the Pre 9-11-01 Forecast and Actual Results for 9-11-01 through 9-30-01
Total Operating Revenue			
Total Operating Expenses			
Total Operating Income			
Non-Operating Income			
Non-Operating Expenses			
Income Before Taxes			
Total Net Income (after taxes)			

FORM 330-A
Page 2 of 5

NAME OF AIR CARRIER	

PART 2: OPERATIONAL DATA
(in whole numbers)

Passenger Carrier Operating Data	Pre 9-11-01 Forecast for the Period 9-11-01 through 9-30-01	Actual Results for the Period 9-11-01 through 9-30-01	Difference Between the Pre 9-11-01 Forecast and Actual Results for 9-11-01 through 9-30-01
Revenue Passengers Carried			
Revenue Passenger Miles (RPMs)			
Available Seat Miles (ASMs)			
Load Factor (%)			
Breakeven Load Factor (%)			
Average Length of Passenger Haul			
Departures Performed (actual) or Planned (forecast)			
Average Passenger Fare ($)			
Passenger Revenue Yield per RPM (cents)			
Operating Revenue per ASM (cents)			
Operating Expense per ASM (cents)			

NAME OF AIR CARRIER	

PART 3: ESTIMATE OF LOSS FOR THE PERIOD

OCTOBER 1, 2001 TO DECEMBER 31, 2001

FINANCIAL DATA
(in whole dollars)

Passenger Carrier Financial Data	Pre 9-11-01 Forecast for the Period 10-01-01 through 12-31-01	Current Forecast for the Period 10-01-01 through 12-31-01	Difference Between the Pre 9-11-01 Forecast and the Current Forecast for 10-01-01 through 12-31-01
Total Operating Revenue			
Total Operating Expenses			
Total Operating Income			
Non-Operating Income			
Non-Operating Expenses			
Income Before Taxes			
Total Net Income (after taxes)			

FORM 330-A
Page 4 of 5

NAME OF AIR CARRIER	

PART 4: OPERATIONAL DATA
(in whole numbers)

Passenger Carrier Operating Data	Pre 9-11-01 Forecast for the Period 10-01-01 through 12-31-01	Current Forecast for the Period 10-01-01 through 12-31-01	Difference Between the Pre 9-11-01 Forecast and the Current Forecast for 10-01-01 through 12-31-01
Revenue Passengers Carried			
Revenue Passenger Miles (RPMs)			
Available Seat Miles (ASMs)			
Load Factor (%)			
Breakeven Load Factor (%)			
Average Length of Passenger Haul			
Departures Performed (actual) or Planned (forecast)			
Average Passenger Fare ($)			
Passenger Revenue Yield per RPM (cents)			
Operating Revenue per ASM			
Operating Expense per ASM			

NAME OF AIR CARRIER	

Part 5: ACCOUNT INFORMATION AND CERTIFICATION

Compensation payments will be made via Electronic Funds Transfer. The Department of Transportation can process this type of payment only if air carrier applicants submit the following banking information with their requests:

Air Carrier Bank Routing Number	_ _ _ _ _ _ _ _ _ (9 positions)
Air Carrier Bank Account Number	
Name on Account	
Type of Account (*e.g.*, checking, savings)	
Taxpayer ID Number	

I CERTIFY THAT THE INFORMATION CONTAINED IN PARTS 1 THROUGH 5 OF THIS FORM (FROM 330-A) IS TRUE AND ACCURATE UNDER PENALTY OF LAW. FALSIFICATION OF A CLAIM FOR COMPENSATION/PAYMENTS UNDER PUB. L. 107-42 MAY RESULT IN CRIMINAL PROSECUTION RESULTING IN FINE AND/OR IMPRISONMENT (18 U.S.C. 1001)

Certifying Officer (signature) **Date**

Print Name and Title (CEO, CFO or COO) **Telephone Number**

Appendix B to Part 330—Forms for Certificated Cargo Carriers

FORM 330-B
Page 1 of 5

AIR TRANSPORTATION SAFETY AND SYSTEM STABILIZATION ACT

APPLICATION FOR COMPENSATION FOR CERTIFICATED CARRIERS THAT PROVIDE ALL CARGO OPERATIONS ONLY

NAME, ADDRESS AND TELEPHONE NUMBER OF AIR CARRIER	
TYPE OF DOT ECONOMIC AUTHORITY HELD	
COMPENSATION AMOUNT RECEIVED TO DATE UNDER SECTION 101(A)(2) OF THE ACT	

PART 1: FORECASTED & ACTUAL LOSSES FOR THE PERIOD

SEPTEMBER 11, 2001 TO SEPTEMBER 30, 2001

FINANCIAL DATA
(in whole dollars)

Cargo Carrier Financial Data	Pre 9-11-01 Forecast for the Period 9-11-01 through 9-30-01	Actual Results for the Period 9-11-01 through 9-30-01	Difference Between the Pre 09-11-01 Forecast and Actual Results for 9-11-01 through 9-30-01
Total Operating Revenue			
Total Operating Expenses			
Total Operating Income			
Non-Operating Income			
Non-Operating Expenses			
Income Before Taxes			
Total Net Income (after taxes)			

NAME OF AIR CARRIER	

Part 2: OPERATIONAL DATA (in whole numbers)

Cargo Carrier Operating Data	Pre 9-11-01 Forecast for the Period 9-11-01 through 9-30-01	Actual Results for the Period 9-11-01 through 9-30-01	Difference Between the Pre 9-11-01 Forecast and Actual Results for 9-11-01 through 9-30-01
Revenue Tons Enplaned			
Revenue Ton Miles (RTMs)			
Available Ton Miles (ATMs)			
Load Factor (%)			
Departures Performed (actual) or Planned (forecast)			
Cargo Revenue Yield per RTM			

FORM 330-B
Page 3 of 5

NAME OF AIR CARRIER	

Part 3: ESTIMATE OF LOSS FOR THE PERIOD

OCTOBER 1, 2001 TO DECEMBER 31, 2001

FINANCIAL DATA
(in whole dollars)

Cargo Carrier Financial Data	Pre 9-11-01 Forecast for the Period 10-01-01 through 12-31-01	Current Forecast for the Period 10-01-01 through 12-31-01	Difference Between the Pre 9-11-01 Forecast and the Current Forecast for 10-01-01 through 12-31-01
Total Operating Revenue			
Total Operating Expenses			
Total Operating Income			
Non-Operating Income			
Non-Operating Expenses			
Income Before Taxes			
Total Net Income (after taxes)			

NAME OF AIR CARRIER	

PART 4: OPERATIONAL DATA
(in whole numbers)

Cargo Carrier Operating Data	Pre 9-11-01 Forecast for the Period 10-01-01 through 12-31-01	Current Forecast for the Period 10-01-01 through 12-31-01	Difference Between the Pre 9-11-01 Forecast and the Current Forecast for 10-01-01 through 12-31-01
Revenue Tons Enplaned			
Revenue Ton Miles (RTMs)			
Available Ton Miles (ATMs)			
Load Factor (%)			
Departures Performed (actual) or Planned (forecast)			
Cargo Revenue Yield per RTM			

NAME OF AIR CARRIER	

Part 5: ACCOUNT INFORMATION AND CERTIFICATION

Compensation payments will be made via Electronic Funds Transfer. The Department of Transportation can process this type of payment only if air carrier applicants submit the following banking information with their requests:

Air Carrier Bank Routing Number	_ _ _ _ _ _ _ _ _ (9 positions)
Air Carrier Bank Account Number	
Name on Account	
Type of Account (*e.g.*, checking, savings)	
Taxpayer ID Number	

I CERTIFY THAT THE INFORMATION CONTAINED IN PARTS 1 THROUGH 5 OF THIS FORM (FROM 330-B) IS TRUE AND ACCURATE UNDER PENALTY OF LAW. FALSIFICATION OF A CLAIM FOR COMPENSATION/PAYMENTS UNDER PUB. L. 107-42 MAY RESULT IN CRIMINAL PROSECUTION RESULTING IN FINE AND/OR IMPRISONMENT. (18 U.S.C. 1001)

Certifying Officer (signature) **Date**

Print Name and Title (CEO, CFO or COO) **Telephone Number**

Appendix C to Part 330—Forms for Air Taxi Operators

FORM 330-C
Page 1 of 7

AIR TRANSPORTATION SAFETY AND SYSTEM STABILIZATION ACT APPLICATION FOR COMPENSATION FOR AIR TAXI OPERATORS

NAME, ADDRESS AND TELEPHONE NUMBER OF AIR TAXI OPERATOR	
DATE OF MOST RECENT PART 298 REGISTRATION OR AMENDMENT	
FAA PART 135 OR 121 CERTIFICATE NUMBER	

PART 1: FORECASTED & ACTUAL LOSSES FOR THE PERIOD SEPTEMBER 11, 2001 TO SEPTEMBER 30, 2001 (in whole dollars)

Air Taxi Financial Data	Contracted/Planned Operations for the Period 9-11-01 through 9-30-01	Actual Results for the Period 9-11-01 through 9-30-01	Difference Between the Pre 09-11-01 Forecast and Actual Results for 9-11-01 through 9-30-01
Total Operating Revenue			
Total Operating Expenses			
Total Operating Income			
Non-Operating Income			
Non-Operating Expenses			
Income Before Taxes			
Total Net Income (after taxes)			

The operations for hire for which losses are claimed in this chart must have been cancelled entirely, resulting in a complete loss of revenue for those operations. Revenue for these operations must not have been re-captured through subsequent re-accommodation of the same trips. Such non-recovered losses in revenues had associated countervailing reductions in operating expenses that have also been incorporated in the data and calculations in this chart.

FORM 330-C
Page 2 of 7

NAME OF AIR CARRIER	

PART 2: REPORT OF OPERATING STATISTICS FOR AIR TRANSPORTATION FOR HIRE*
(in whole numbers)

FOR AIRCRAFT USED IN PASSENGER, PASSENGER/CARGO & OTHER TRANSPORT SERVICES FOR THE MONTH OF AUGUST 2001

Aircraft Type	Number of Type in Use for Transport Services**	Number of Seats Available per Aircraft for Use by Paid Passengers	Revenue Aircraft Miles Flown in Transport Services	Available Seat Miles in Transport Services	Revenue Airborne Hours in Transport Services	Revenue Aircraft Departures in Transport Services
1)						
2)						
3)						
4)						
5)						
6)						

FOR AIRCRAFT USED ONLY FOR ALL-CARGO OPERATIONS* FOR THE QUARTER ENDED JUNE 30, 2001**

Aircraft Type	Number of Type in Use for Transport Services**	Available Payload Capacity (in pounds)	Revenue Aircraft Miles Flown in Transport Services	Cargo Revenue Ton Miles in Transport Services (if known)	Revenue Airborne Hours in Transport Services	Revenue Aircraft Departures in Transport Services
1)						
2)						
3)						
4)						
5)						
6)						

* Air transportation for hire includes only commercial services operated under Part 121 or Part 135 operating certificates. Other services operated under Part 91, as well as dry leases and flights operated for the purpose of flight instructions, maintenance testing and aircraft positioning are excluded.
** This number should be the same number as listed on the operator's current Part 298 registration and current FAA-issued operations specifications.
*** For all-cargo operations, please note aircraft that are operated under contract for another express or all-cargo carrier and identify those carriers and provide details on a separate, attached sheet.

NOTE: If the operator records and reports aircraft miles, the operator should compute and enter available seat miles by multiplying the number of seats times the aircraft miles. If the operator does not report aircraft miles, DOT will compute the available seat miles. If the operator records and reports cargo RTMs, the operator should enter the amounts directly on the form. If not, DOT will estimate the RTMs based on the other data submitted. All carriers, however, must report airborne hours and departures.

NAME OF AIR CARRIER	

PART 3: ESTIMATE OF LOSS FOR THE PERIOD OCTOBER 1, 2001 TO DECEMBER 31, 2001 (in whole dollars)

Air Taxi Financial Data	Pre 09-11-01 Forecast* for the Period 10-01-01 through 12-31-01	Current Forecast for the Period 10-01-01 through 12-31-01	Difference Between the Pre 09-11-01 Forecast and the Current Forecast for the period 10-01-01 through 12-31-01
Total Operating Revenue			
Total Operating Expenses			
Total Operating Income			
Non-Operating Income			
Non-Operating Expenses			
Income Before Taxes			
Total Net Income (after taxes)			

* For those air taxi operators that do not typically prepare forecasts, use contracted/scheduled services that were scheduled before September 11, 2001 and can be documented.

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NAME OF AIR CARRIER	

PART 4: OPERATIONAL DATA
(in whole numbers or dollars)

Air Taxi Operational Data		Pre 9-11-01 Forecast for the Period 10-01-01 through 12-31-01	Current Forecast for the Period 10-01-01 through 12-31-01	Difference Between the Pre 9-11-01 Forecast and the Forecast for 10-01-01 through 12-31-01
Total operating revenues				
Total operating expenses				
Total operations for hire (departures)				
Total available seat miles **OR**				
Total revenue ton miles				
Total aircraft in fleet:				
(Show aircraft types in the next column)	1)			
	2)			
	3)			
	4)			
	5)			
	6)			
Seats available per aircraft:				
(Show aircraft types in the next column)	1)			
	2)			
	3)			
	4)			
	5)			
	6)			
Total aircraft miles flown:				
(Show aircraft types in the next column)	1)			
	2)			
	3)			
	4)			
	5)			
	6)			
Total airborne hours:				
(Show aircraft types in the next column)	1)			
	2)			
	3)			
	4)			
	5)			
	6)			
Available payload capacity (in lbs.) (all-cargo operations only):				
(Show aircraft types in the next column)	1)			
	2)			
	3)			
	4)			
	5)			
	6)			

FORM 330-C
Page 5 of 7

NAME OF AIR CARRIER	

PART 5: HISTORICAL OPERATIONAL DATA
(in whole numbers or dollars)

Air Taxi Operational Data		Month of Sept 2000	Month of Oct 2000	Month of Nov 2000	Month of Dec 2000		Month of July 2001	Month of Aug 2001
Total operating revenues								
Total operating expenses								
Total operations for hire (departures)								
Total available seat miles **OR**								
Total revenue ton miles								
Total aircraft in fleet:								
(Show aircraft types in the next column)	1)							
	2)							
	3)							
	4)							
	5)							
	6)							
Seats available per aircraft:								
(Show aircraft types in the next column)	1)							
	2)							
	3)							
	4)							
	5)							
	6)							
Total aircraft miles flown:								
(Show aircraft types in the next column)	1)							
	2)							
	3)							
	4)							
	5)							
	6)							
Total airborne hours:								
(Show aircraft types in the next column)	1)							
	2)							
	3)							
	4)							
	5)							
	6)							
Available payload capacity (in lbs.) (all-cargo operations only):								
(Show aircraft types in the next column)	1)							
	2)							
	3)							
	4)							
	5)							
	6)							

NAME OF AIR CARRIER	

Part 6: ACCOUNT INFORMATION AND CERTIFICATION

Compensation payments will be made via Electronic Funds Transfer. The Department of Transportation can process this type of payment only if air carrier applicants submit the following banking information with their requests:

Air Carrier Bank Routing Number	_ _ _ _ _ _ _ _ _ (9 positions)
Air Carrier Bank Account Number	
Name on Account	
Type of Account (*e.g.*, checking, savings)	
Taxpayer ID Number	

I CERTIFY THAT THE INFORMATION CONTAINED IN PARTS 1 THROUGH 5 OF THIS FORM (FROM 330-C) IS TRUE AND ACCURATE UNDER PENALTY OF LAW. FALSIFICATION OF A CLAIM FOR COMPENSATION/PAYMENTS UNDER PUB. L. 107-42 MAY RESULT IN CRIMINAL PROSECUTION RESULTING IN FINE AND/OR IMPRISONMENT(18 U.S.C. 1001).

Certifying Officer (signature) **Date**

Print Name and Title (CEO, CFO or COO) **Telephone Number**

EXPLANATORY NOTES:

1. In order to avoid the possibility of misinterpretation, we are requiring that numbers or notations (for example, "N/A") be entered into all data blocks on all forms even if those numbers are zero. We also note that all amounts are to be reported in whole numbers.

2. The required forecasted amounts should be based on a forecasting and/or budgeting approach or similar accounting system if the air carrier routinely uses that method. For those carriers whose accounting systems or methodologies rely more on actual or short run projections, we ask that they make a "good faith" effort to categorize their revenues and expenses according to the required forms. In this regard, the following may provide additional assistance.

3. As general guidance, we include the following information that has been adapted from 14 CFR Part 298 (Section 298.62) or 14 CFR Part 241. Air transportation for hire includes only commercial services operated under Part 121 or Part 135 operating certificates. Other services operated under Part 91, as well as dry leases and flights operated for the purpose of flight instructions, maintenance testing and aircraft positioning are excluded.

4. Total operating revenues generally include gross revenues accruing from services ordinarily associated with air transportation. It is meant to include revenue derived from scheduled service, on demand and nonscheduled service operations.

5. In general, total operating expenses include expenses of the type usually and ordinarily incurred in the performance of air transportation. It includes expenses incurred: directly in the in-flight operation of aircraft; in the holding of aircraft and aircraft personnel in readiness for assignment to an in-flight status; on the ground, in controlling and protecting the in-flight movement of aircraft; landing and handling aircraft on the ground; selling transportation, servicing and handling passenger and cargo traffic; promoting the development of traffic; and administering operations generally. It shall also include expenses which are specifically identifiable with the repair and upkeep of property and equipment used in the performance of air transportation and all depreciation and amortization expenses applicable to property and equipment used in providing air transportation services.

6. Non-operating income includes such items as interest income and other similar investments. It may also include capital gains (for example, aircraft sales). Non-operating expenses include interest expense and other expenses attributable to financing or other activities that are extraneous to and not an integral part of air transportation or its incidental services. It may also include capital losses (for example, aircraft sales).

7. We note that claims for compensation cannot be based solely on lost revenues, that is, the total revenue that an air taxi operator expected to receive from flights that would have been flown but were cancelled due to the DOT-mandated flight stoppage. While these amounts would provide information on the changes in total operating revenues, it is important to recognize that changes in total operating expenses must also be considered in calculating operating income and net income which is ultimately used to determine compensation. Also, for those carriers with less sophisticated accounting systems, the calculation of forecasted total operating expenses might be based on an analysis of fixed costs (those that stay the same regardless of the number of flights or changes in passenger and cargo traffic) and variable costs (those that change in proportion to the level of operations and traffic volume).

8. All carriers should be able to provide actual financial results for the period of September 11 to September 30, 2001, as required. We will not accept incomplete forms or reports that are submitted in lieu of the required forms and we will not accept the submission of invoices, flight logs, sales records, calendar notations of events or other similar documents in lieu of the required forms. However, supporting documentation must be retained for audit purposes.

[FR Doc. 01–27177 Filed 10–25–01; 9:37 am]
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Commodity Futures Modernization Act; implementation:

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

S.J. Res. 19/P.L. 107–54

Providing for the reappointment of Anne d'Harnoncourt as citizen regent of the Board of Regents of the Smithsonian Institution. (Oct. 24, 2001; 115 Stat. 270)

S.J. Res. 20/P.L. 107–55

Providing for the appointment of Roger W. Sant as citizen regent of the Board of Regents of the Smithsonian Institution. (Oct. 24, 2001; 115 Stat. 271)

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CFR CHECKLIST

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1, 2 (2 Reserved)	(869–044–00001–6)	6.50	[4]Jan. 1, 2001
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2000, through January 1, 2001. The CFR volume issued as of January 1, 2000 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2001. The CFR volume issued as of April 1, 2000 should be retained.

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