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

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 302

[Docket No. 00–085–2]

District of Columbia; Movement of Plants and Plant Products

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are adopting as a final rule, with one change, an interim rule that established regulations concerning the application for and issuance of certificates for the interstate movement of plants and plant products from the District of Columbia. The certificates provided for by the interim rule address the plant health status of plants and plant products moving interstate from the District of Columbia. In this final rule, we are revising the contact information for persons seeking certification in order to facilitate the application for certificates.

EFFECTIVE DATE: October 30, 2001.

FOR FURTHER INFORMATION CONTACT: Mr. Jonathan Jones, Operations Officer, Invasive Species and Pest Management, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–8247.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective and published in the **Federal Register** on January 5, 2001 (66 FR 1015–1016, Docket No. 00–085–1), we established regulations in 7 CFR part 302 concerning the application for and issuance of certificates for the interstate movement of plants and plant products from the District of Columbia. The interim rule was necessary to facilitate the interstate movement of plants and plant products from the District of Columbia.

We solicited comments concerning the interim rule for 60 days ending March 6, 2001. We did not receive any comments.

However, in this document, we are revising the contact information for persons seeking certification. In the interim rule, we designated the Plant Protection and Quarantine (PPQ) office at the Port of Baltimore, MD, as the point of contact for persons interested in obtaining District of Columbia Plant Health Certificates. We have determined that the PPQ State Plant Health Director's office in Annapolis, MD, is in a better position to serve the needs of persons requiring the inspection and certification provided for by the regulations. Accordingly, in this final rule we are revising § 302.2 to designate the Annapolis, MD, PPQ office as the point of contact for persons seeking certification.

Therefore, for the reasons given in the interim rule and in this document, we are adopting the interim rule as a final rule, with the change discussed in this document.

This final rule also affirms the information contained in the interim rule concerning Executive Orders 12372 and 12988 and the economic analysis under Executive Order 12866 and the Regulatory Flexibility Act.

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

Effective Date

Pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find good cause for making this rule effective less than 30 days after publication in the **Federal Register.** The interim rule adopted as final by this rule was effective on January 5, 2001. This final rule revises the point of contact for obtaining inspection or documentation of the plant health status of plants or plant products to be moved interstate from the District of Columbia. Immediate action is necessary to revise the contact information in order to facilitate the application for certificates for the interstate movement of plants and plant products from the District of Columbia. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register.**

Paperwork Reduction Act

In accordance with section 3507 (j) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection and recordkeeping requirements included in the interim rule were granted emergency approval by the Office of Management and Budget (OMB) under control number 0579–0166. OMB has approved the continuation of that approval for 3 years.

List of Subjects in 7 CFR Part 302

Agricultural commodities, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

Accordingly, the interim rule establishing 7 CFR part 302 which was published at 66 FR 1015–1016 on January 5, 2001, is adopted as a final rule with the following changes:

PART 302—DISTRICT OF COLUMBIA; MOVEMENT OF PLANTS AND PLANT PRODUCTS

1. The authority citation for part 302 continues to read as follows:

Authority: 7 U.S.C. 7712, 7714, 7715, 7731, 7732, 7735, 7736, 7745, and 7754–7756; 7 CFR 2.22, 2.80, and 371.3.

2. Section 302.2 is revised to read as follows:

§ 302.2 Movement of plants and plant products

Inspection or documentation of the plant health status of plants or plant products to be moved interstate from the District of Columbia may be obtained by contacting the State Plant Health Director, Plant Protection and Quarantine, APHIS, Wayne A. Cawley, Jr. Building, Room 350, 50 Harry S. Truman Parkway, Annapolis, MD 21401–7080; phone: (410) 224–3452; fax: (410) 224–1142.

Done in Washington, DC, this 24th day of October 2001.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 01–27262 Filed 10–29–01; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 01–065–1]

Change in Disease Status of Greece Because of BSE

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the regulations by adding Greece to the list of regions where bovine spongiform encephalopathy exists because the disease has been detected in a native-born animal in that region. Greece is currently listed among the regions that present an undue risk of introducing bovine spongiform encephalopathy into the United States. Therefore, the effect of this action is a continued restriction on the importation of ruminants that have been in Greece and meat, meat products, and certain other products of ruminants that have been in Greece. This action is necessary in order to update the disease status of Greece regarding bovine spongiform encephalopathy.

DATES: This interim rule is effective retroactively to July 2, 2001. We invite you to comment on this docket. We will consider all comments that we receive by December 31, 2001.

ADDRESSES: Please send four copies of your comment (an original and three copies) to: Docket No. 01–065–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 01–065–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: Dr. Donna Malloy, Senior Staff Veterinarian, National Center for Import and Export, Products Program, VS, APHIS, 4700 River Road Unit 40, Riverdale, MD 20737–1231; (301) 734–3277.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR parts 93, 94, 95, and 96 (referred to below as the regulations) govern the importation of certain animals, birds, poultry, meat, other animal products and byproducts, hay, and straw into the United States in order to prevent the introduction of various animal diseases, including bovine spongiform encephalopathy (BSE).

BSE is a neurological disease of cattle and is not known to exist in the United States. It appears that BSE is primarily spread through the use of ruminant feed containing protein and other products from ruminants infected with BSE. Therefore, BSE could become established in the United States if materials carrying the BSE agent, such as certain meat, animal products, and animal byproducts from ruminants, are imported into the United States and are fed to ruminants in the United States. BSE could also become established in the United States if ruminants with BSE are imported into the United States.

Sections 94.18, 95.4, and 96.2 of the regulations prohibit or restrict the importation of certain meat and other animal products and byproducts from ruminants that have been in regions in which BSE exists or in which there is an undue risk of introducing BSE into the United States. Paragraph (a)(1) of § 94.18 lists the regions in which BSE exists. Paragraph (a)(2) lists the regions that present an undue risk of introducing BSE into the United States because their import requirements are less restrictive than those that would be acceptable for import into the United States and/or because the regions have inadequate surveillance. Paragraph (b) of § 94.18 prohibits the importation of fresh, frozen, and chilled meat, meat products, and most other edible products of ruminants that have been in any region listed in paragraphs (a)(1) or (a)(2). Paragraph (c) of § 94.18 restricts the importation of gelatin derived from ruminants that have been in any of these regions. Section 95.4 prohibits or restricts the importation of certain byproducts from ruminants that have been in any of those regions, and § 96.2 prohibits the importation of casings, except stomach casings, from ruminants that have been in any of these regions. Additionally, the regulations in 9 CFR part 93 pertaining to the importation of live animals provide that the Animal and Plant Health Inspection Service may deny the importation of ruminants from regions where a communicable disease such as BSE exists and from regions that present risks of introducing communicable diseases into the United States (see § 93.404(a)(3)).

Currently, Greece is among the regions listed in § 94.18(a)(2), which are regions that present an undue risk of introducing BSE into the United States. However, on July 2, 2001, a case of BSE was confirmed in a native-born animal in Greece. Therefore, in order to update the disease status of this region regarding BSE, we are amending the regulations by removing Greece from the list in § 94.18(a)(2) of regions that present an undue risk of introducing BSE into the United States and adding Greece to the list in § 94.18(a)(1) of regions where BSE is known to exist. The effect of this action is a continued restriction on the importation of ruminants that have been in Greece and on the importation of meat, meat products, and certain other products and byproducts of ruminants that have been in Greece. We are making these amendments effective retroactively to July 2, 2001, which is the date that BSE was confirmed in a native-born animal in that region.

Emergency Action

This rulemaking is necessary on an emergency basis to update the disease status of Greece regarding BSE. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

We are amending the regulations by adding Greece to the list of regions where BSE exists because the disease

has been detected in native-born animals in that region. Greece is currently listed among the regions that present an undue risk of introducing BSE into the United States. Regardless of which of the two lists a region is on, the same restrictions apply to the importation of ruminants and meat, meat products, and most other products and byproducts of ruminants that have been in the region. Therefore, this action, which is necessary in order to update the disease status of Greece regarding BSE, will not result in any change in the restrictions that apply to the importation of ruminants and meat, meat products, and certain other products and byproducts of ruminants that have been in Greece.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has retroactive effect to July 2, 2001; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, we are amending 9 CFR part 94 as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 450, 7711, 7712, 7713, 7714, 7751, and 7754; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.4.

§ 94.18 [Amended]

2. Section 94.18 is amended as follows:

a. In paragraph (a)(1), by adding, in alphabetical order, the word ''Greece,''.

b. In paragraph (a)(2), by removing the word ''Greece,''.

Done in Washington, DC, this 24th day of October 2001.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 01–27263 Filed 10–29–01; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF ENERGY

10 CFR Part 1044

[Docket No. SO–RM–00–3164]

RIN 1992–AA26

Office of Security and Emergency Operations; Security Requirements for Protected Disclosures Under Section 3164 of the National Defense Authorization Act for Fiscal Year 2000

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) adopts, with minor change, an interim final rule published on January 18, 2001, which prescribed the security procedures that a DOE employee or DOE contractor employee, including an employee or contractor employee of the National Nuclear Security Administration, must follow to make a protected disclosure of classified or other controlled information under section 3164 of the National Defense Authorization Act for Fiscal Year 2000.

EFFECTIVE DATE: This final rule is effective November 29, 2001.

FOR FURTHER INFORMATION CONTACT: Raymond C. Holmer, Office of Safeguards and Security (SO–211.3), U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874, (301) 903–7325 or by electronic mail *raymond.holmer@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

On January 18, 2001, DOE published an interim final rule in the **Federal Register** (66 FR 4639). The interim final rule added a new part 1044 to title 10 of the Code of Federal Regulations to establish security requirements for the disclosure of classified and other controlled information under section 3164 of the National Defense Authorization Act for Fiscal Year 2000 (NDAA for FY 2000) (42 U.S.C. 7239). Section 3164 directed the Secretary of Energy to establish a program to ensure that DOE employees or DOE contractor employees engaged in defense activities may not be discharged, demoted, or otherwise discriminated against as a reprisal for making protected disclosures. The Secretary was required by section 3164(g) to prescribe regulations to ensure the security of any information disclosed under the program (42 U.S.C. 7239(g)). To qualify as a ''protected disclosure'' of classified or other controlled information, a covered employee must take appropriate steps to protect the security of the information in accordance with guidance provided by the DOE Inspector General, and reveal the information only to a person or entity specified in the statute (42 U.S.C. 7239(c)).

DOE provided a 30-day public comment period for the interim final rule, and the rule was to become effective on February 20, 2001. In accordance with the memorandum of January 20, 2001, from the Assistant to the President and Chief of Staff, entitled ''Regulatory Review Plan,'' published in the **Federal Register** on January 24, 2001, (66 FR 7702) DOE temporarily delayed for 60 days the effective date of the interim final rule (66 FR 8747, February 2, 2001). Upon completion of its review of the regulation, DOE published a notice in the **Federal Register** on May 10, 2001, (66 FR 23833) confirming the effective date of the interim final rule as April 23, 2001.

II. Discussion of Public Comment

DOE received one comment during the public comment period provided for the interim final rule. The Special Counsel of the U.S. Office of Special Counsel stated her concern that the interim final rule failed to include any reference to section 3164(l) of the NDAA for FY 2000, which provides that the protections of section 3164 are independent of, and not subject to any limitations that may be provided in, the Whistleblower Protection Act of 1989 (Pub. L. 101–12) or any other law that may provide protection for disclosures of information by an employee of DOE or of a DOE contractor. The Special Counsel requested DOE to clarify this issue in the final rule by making clear that whistleblower disclosures of classified or controlled information by DOE employees, including disclosures to the Special Counsel or to the DOE Inspector General, are also protected under the Whistleblower Protection Act of 1989.

DOE agrees that the scope of the section 3164 whistleblower protection program should be addressed in the

final rule to avoid confusion by employees of DOE and its contractors. Therefore, DOE is amending section 1044.01 to include a new paragraph (b) that tracks the language of section 3164(l) of the NDAA for FY 2000.

III. Procedural Requirements

A. Review Under Executive Order 12866

Today's regulatory action has been determined not to be ''a significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review,'' (58 FR 51735, October 4, 1993). Accordingly, this action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule will not have a ''significant economic impact on a substantial number of small entities.'' This final rule prescribes the security procedures that a DOE or DOE contractor employee engaged in defense activities must follow when making a protected disclosure of classified or other controlled information under section 3164 of the NDAA for FY 2000. DOE is not required by the Administrative Procedure Act (5 U.S.C. 553) or any other law to propose this rule for public comment. Accordingly, the Regulatory Flexibility Act requirements do not apply to this rulemaking, and no regulatory flexibility analysis has been prepared.

C. Review Under the Paperwork Reduction Act

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

D. Review Under the National Environmental Policy Act

Today's rule describes the security requirements a DOE or DOE contractor employee engaged in defense activities must follow when making a protected disclosure of classified or other controlled information under section 3164 of the NDAA for FY 2000. Implementation of this rule will not affect whether such information might cause or otherwise be associated with an environmental impact. The Department has, therefore, determined that this rule is covered under the Categorical Exclusion found at paragraph A.6. of Appendix A to subpart D, 10 CFR part 1021, which applies to rulemakings that are strictly procedural. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 12988

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

F. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' (64 FR 43255, August 10, 1999) requires agencies to develop an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. DOE published its intergovernmental consultation policy and procedures on March 14, 2000, (65 FR 13735). ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. DOE has examined this final rule and has determined that 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. No further action is required by Executive Order 13132.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million in any one year. The Act also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity to timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. DOE's intergovernmental consultation process under the Unfunded Mandates Reform Act of 1995 is described in a statement of policy published by DOE on March 18, 1997, (62 FR 12820). The final rule published today does not contain any Federal mandate, so these requirements do not apply.

H. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' (66 FR 28355, May 22, 2001) requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to the promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For

any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposed action be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

Today's final rule is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

I. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress promulgation of the final rule prior to its effective date. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 10 CFR Part 1044

Administrative practice and procedure, Classified information, Energy, Government contracts, National security information, Security information, Whistleblowing.

Issued in Washington, DC, on October 4, 2001.

Spencer Abraham,

Secretary of Energy.

Accordingly, the interim final rule adding 10 CFR part 1044, which was published at 66 FR 4639 on January 18, 2001, is adopted as a final rule with the following changes:

PART 1044—SECURITY REQUIREMENTS FOR PROTECTED DISCLOSURES UNDER SECTION 3164 OF THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2000

1. The authority citation for part 1044 continues to read as follows:

Authority: 42 U.S.C. 7101 *et seq.*, 7239, and 50 U.S.C. 2401 *et seq.*

2. Section 1044.01 is revised to read as follows:

§ 1044.01 What are the purpose and scope of this part?

(a) *Purpose.* This part prescribes the security requirements for making protected disclosures of classified or unclassified controlled nuclear information under the whistleblower protection provisions of section 3164 of the National Defense Authorization Act for Fiscal Year 2000.

(b) *Scope.* The security requirements for making protected disclosures in this part are independent of, and not subject to any limitations that may be provided in, the Whistleblower Protection Act of 1989 (Public Law 101–12) or any other law that may provide protection for disclosures of information by employees of DOE or of a DOE contractor.

[FR Doc. 01–27230 Filed 10–29–01; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 303

RIN 3064–AC49

Engaged In The Business of Receiving Deposits Other Than Trust Funds

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: This final rule amends the FDIC's regulations covering filing procedures and delegations of authority, to clarify the meaning of the phrase ''engaged in the business of receiving deposits other than trust funds'' in the Federal Deposit Insurance Act. Under the rule, an insured depository institution must maintain one or more non-trust deposit accounts in the aggregate amount of $500,000 in order to be ''engaged in the business of receiving deposits other than trust funds''. Each newly insured depository institution will be deemed to be ''engaged in the business of receiving deposits other than trust funds'' for a period of one year from the date it opens for business. If a newly insured depository institution fails to achieve the minimum deposit standard by the end of that time period, it will be subject to a determination by the FDIC that the institution is not ''engaged in the business of receiving deposits other than trust funds'', and to appropriate administrative action to terminate its insured status. Similarly, each insured depository institution, other than a newly insured depository institution, that is below the minimum deposit standard on two consecutive call report dates will be subject to a determination by the FDIC that the institution is not ''engaged in the business of receiving deposits other than trust funds'', and to appropriate administrative action to terminate its insured status. The final rule also clarifies that the maintenance of one or more non-trust deposit accounts in the aggregate amount of $500,000 is not a ''safe harbor'', but rather the minimum standard in order for an institution to be considered ''engaged in the business of receiving deposits other than trust funds'' under the Federal Deposit Insurance Act.

EFFECTIVE DATE: November 29, 2001.

FOR FURTHER INFORMATION CONTACT: Christopher L. Hencke, Counsel, (202) 898–8839, or Robert C. Fick, Counsel, (202) 898–8962, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. The Statute

The FDIC is authorized to approve or disapprove applications by depository institutions for federal deposit insurance. *See* 12 U.S.C. 1815. In determining whether to approve deposit insurance applications, the FDIC considers the seven factors set forth in section 6 of the Federal Deposit Insurance Act (FDI Act). These factors are (1) the financial history and condition of the depository institution; (2) the adequacy of the institution's capital structure; (3) the future earnings prospects of the institution; (4) the general character and fitness of the management of the institution; (5) the risk presented by the institution to the Bank Insurance Fund or the Savings Association Insurance Fund; (6) the convenience and needs of the community to be served by the institution; and (7) whether the institution's corporate powers are consistent with the purposes of the FDI Act. 12 U.S.C. 1816. Also, under the FDI Act, the FDIC must determine as a threshold matter that an applicant is a ''depository institution which is engaged in the business of receiving deposits other than trust funds * * *'' 12 U.S.C. 1815(a)(1). Applicants that do not satisfy this threshold statutory requirement are ineligible for deposit insurance.

The FDIC applies the seven statutory factors in accordance with its ''Statement of Policy on Applications for Deposit Insurance''. *See* 63 FR 44752 (August 20, 1998). The Statement of Policy discusses each of the factors at length; however, it does not address the threshold requirement that an applicant be ''engaged in the business of receiving deposits other than trust funds''.

The threshold requirement for obtaining federal deposit insurance is set forth in section 5 of the FDI Act. *See* 12 U.S.C. 1815(a)(1). The language used by section 5 (''engaged in the business of receiving deposits other than trust funds'') also appears in section 8 and section 3 of the FDI Act. Under section 8, the FDIC is obligated to terminate the insured status of any depository institution ''not engaged in the business of receiving deposits, other than trust funds * * *'' 12 U.S.C. 1818(p). In section 3, the term ''State bank'' is defined in such a way as to include only those State banking institutions

''engaged in the business of receiving deposits, other than trust funds * * *'' 12 U.S.C. 1813(a)(2).

The phrase ''engaged in the business of receiving deposits other than trust funds'' as used in the FDI Act is ambiguous. For example, the statute does not specify whether a depository institution must hold a particular dollar amount of deposits in order to be ''engaged in the business of receiving deposits other than trust funds.'' Similarly, it does not specify whether a depository institution must accept a particular number of deposits within a particular period in order to be ''engaged in the business of receiving deposits other than trust funds.'' In addition, it does not specify whether a depository institution must accept non-trust deposits from the general public as opposed to accepting deposits only from one or more members of a particular group (such as the institution's trust customers, its employees or affiliates).

In applying this statutory requirement (''engaged in the business of receiving deposits other than trust funds'') for over thirty years, the FDIC has approved applications from many institutions that did not intend to accept non-trust deposits from the general public. Also, the FDIC has approved applications from institutions that only intended to hold one type of deposit account (*e.g.,* certificates of deposit) or that did not intend to hold more than one or a few non-trust deposit accounts. However, the FDIC's long-standing practice of approving applications from such non-traditional depository institutions has not been formally codified in such a way as to remove public uncertainty as to the meaning of the phrase ''engaged in the business of receiving deposits other than trust funds.''

II. General Counsel Opinion No. 12

In order to clarify this ambiguity in the statute, the FDIC published General Counsel Opinion No. 12. *See* 65 FR 14568 (March 17, 2000). In that opinion, the FDIC's General Counsel stated that the statutory requirement of being ''engaged in the business of receiving deposits other than trust funds'' can be satisfied by the continuous maintenance of one or more non-trust deposit accounts in the aggregate amount of $500,000.

The purpose of General Counsel Opinion No. 12 was to remove uncertainty as to the meaning of being ''engaged in the business of receiving deposits other than trust funds.'' However, as indicated by a recent court ruling, issuance of the General Counsel's opinion did not achieve that purpose. In *Heaton* v. *Monogram Credit Card Bank of Georgia,* 2001 WL 15635 (E.D. La. January 5, 2001) the statutory interpretation set forth in General Counsel Opinion No. 12 was rejected by a federal district court. As a result of the court's ruling, uncertainty continues to exist as to the meaning of being ''engaged in the business of receiving deposits other than trust funds.''

The phrase ''engaged in the business of receiving deposits other than trust funds'' should not be subject to differing and, perhaps, inconsistent judicial interpretations. Uniformity is needed. Both banks and the public need to know that the applicable Federal banking laws will be applied consistently throughout the United States. Moreover, they need assurance that once the FDIC grants insurance to a bank or thrift, the deposits at that bank or thrift will remain insured so long as it satisfies the legal requirement of being ''engaged in the business of receiving deposits other than trust funds,'' and the FDIC has not terminated its insurance.

III. The Petition

The Conference of State Bank Supervisors (CSBS), an organization representing state officials responsible for chartering, regulating and supervising state-chartered banks, petitioned the FDIC's Board of Directors to promulgate a regulation to clarify the meaning of the phrase ''engaged in the business of receiving deposits other than trust funds'' as used in the FDI Act.

An opposing letter submitted by the plaintiff in the *Heaton* v. *Monogram* litigation questioned the timing of the regulation. In this opposing letter, the plaintiff argued that the promulgation of a regulation while litigation relating to this issue is pending would represent an ''abuse of discretion'' and a ''conflict of interest.'' The plaintiff believes that no regulation should be promulgated until the litigation is completed.

The FDIC does not agree that rulemaking would constitute an ''abuse of discretion.'' On the contrary, the FDIC believes that rulemaking is necessary in order to remove the existing uncertainty, confusion and the potential for inconsistent interpretations. *See Smiley* v. *Citibank, N.A.,* 517 U.S. 735, 116 S. Ct. 1730 (1996).

IV. Questions And Comments

When the FDIC's Board of Directors (Board) published its notice of proposed rulemaking, *Being Engaged in the Business of Receiving Deposits Other Than Trust Funds,* 66 FR 20102, (April 19, 2001) it sought comments from the public on all aspects of the rule and also sought responses on nine specific questions. The FDIC received twenty-one timely comment letters and two comment letters submitted after the end of the comment period. Also, one letter objected to the FDIC's consideration of comment letters thought to be filed late. Overall, eighteen timely comment letters were in favor of the regulation and three were opposed.

The nine questions and a summary of the comments/responses to those questions are detailed below.

1. Should the FDIC Adopt a Regulatory Standard for Determining Whether a Depository Institution is ''Engaged in the Business of Receiving Deposits Other Than Trust Funds''?

Eighteen comment letters were in favor of the FDIC's adoption of a regulatory standard: eight depository institutions or depository institution holding companies, three financial institution trade associations, three law firms, two state banking supervisors, the Office of Thrift Supervision, and VISA U.S.A., Inc. Three commenters objected to the adoption of any regulatory standard by the FDIC. These objections are addressed in detail in the following section.

2. If so, Should the Standard be Based on a Particular Number and/or Amount of Non-Trust Deposits? Or Should the Standard be Based on Other Factors, Such as the Institution's Legal Authority to Accept Non-Trust Deposits or the Institution's Policies with Respect to the Acceptance of Non-Trust Deposits?

Three commenters responded on this question. One thought that the standard could be based on a particular number and amount of non-trust deposits. Another thought that the standard should not be based on any particular number of non-trust deposits as long as the institution had the capacity to accept even one non-trust deposit. The third commenter thought that an institution only needs to have the legal authority to receive non-trust deposits in order to be engaged in the business of receiving deposits other than trust funds.

The FDIC has considered the suggestions that legal authority or capacity to accept non-trust deposits alone is sufficient, but believes that its standard is the better approach. Bare legal authority or capacity to receive non-trust deposits without the actual receipt or holding of any deposits evidences only a potential ability to receive deposits, and this potential may never be realized. If an institution can be engaged in the business of receiving deposits other than trust funds simply by having the legal authority or capacity

to receive deposits, it would be able to enjoy all of the benefits of being an insured institution *e.g.,* the ability to export interest rates, without ever actually providing any deposit services. We do not believe that such a standard would be consistent with the purposes of federal deposit insurance. Consequently, the FDIC has declined to adopt that standard.

3. Assuming a Minimum Amount of Non-Trust Deposits is Required, Should the Standard be Based on a Particular Number of Non-Trust Deposit Accounts? If so, Should that Number Be One? If not, What Should be the Minimum Number of Non-Trust Deposit Accounts? Why?

Of the thirteen commenters responding on this question, none thought that an institution should be required to maintain more than one deposit account.

4. Assuming That the Standard Should Be Based on a Particular Amount of Non-Trust Deposits, Should That Amount Be $500,000? If Not, What Should Be the Minimum Amount of Non-Trust Deposits? Why?

Of the eleven commenters responding on this question, ten thought the minimum amount of non-trust deposits should be $500,000; the other commenter thought it should be a ''modest amount.''

5. Should a Depository Institution Be Required To Accept Deposits from the Public at Large (as Opposed to Accepting Deposits From a Particular Group Such as the Institution's Trust Customers or Employees or Affiliates) in Order To Be ''Engaged in the Business of Receiving Deposits Other Than Trust Funds''? If So, Why?

Of the eleven commenters responding on this question, all thought that a depository institution should not be required to accept deposits from the public at large (as opposed to accepting deposits from a particular group such as the institution's trust customers, employees or affiliates).

6. Should a Depository Institution be Required To Offer a Selection of Different Types of Deposits (e.g., Demand Deposits, Savings Deposits, Certificates of Deposit) in Order To Be ''Engaged in the Business of Receiving Deposits Other Than Trust Funds''? If So, Why?

Of the eleven commenters responding on this question, all thought that a depository institution should not be required to offer a selection of different types of deposits (e.g., demand deposits, savings deposits, certificates of deposit).

7. Should the FDIC Create Any Exceptions for Special Circumstances? For Example, Should a New Institution Be Given a Certain Period of Time to Reach the Minimum Number of Non-Trust Deposit Accounts or To Attain the Minimum Amount of Non-Trust Deposits?

Of the eight commenters responding on this question, all thought that the FDIC should permit exceptions for special circumstances. Four commenters specifically mentioned permitting an exception for newly insured depository institutions; two also thought that there should be an exception for institutions (other than the newly insured institutions) that fall below the minimum to regain sufficient deposits; and one thought the FDIC should allow some time for banks, particularly in small communities, to meet the minimum deposit standard.

The FDIC believes that these suggestions raise significant issues. At the time they apply for deposit insurance some newly chartered institutions, for example, those organized by individuals, may not have received $500,000 in non-trust deposits. Indeed, potential depositors may not want to put their money in an institution that is not yet insured. Absent some modification to the rule, this disincentive could prolong the time it takes an institution to reach the minimum deposit standard or possibly even prevent it from reaching the minimum deposit standard. Consequently, the FDIC has decided to modify the rule to provide that an applicant for deposit insurance would be deemed to be ''engaged in the business of receiving deposits other than trust funds'' for one year from the date it opens for business. If such an institution does not meet the minimum deposit standard at the end of that period, it would be subject to a determination by the FDIC that the institution is not ''engaged in the business of receiving deposits other than trust funds'' and to termination of its insured status under section 8(p) of the FDI Act, 12 U.S.C. 1818(p).

However, certain other newly chartered depository institutions should be able to meet the $500,000 minimum deposit standard from the outset. In particular, a newly chartered depository institution that is organized by, or intended to be owned by, an existing company (whether or not a bank holding company), typically does not need a grace period to reach the $500,000 minimum deposit standard. Therefore, the FDIC intends to include a condition in any order granting deposit insurance to such a depository institution that the depository institution have the $500,000 minimum deposit before deposit insurance becomes effective.

Similarly, several commenters suggested a grace period for operating insured depository institutions that are not newly insured. The rationale for such a grace period is that any insured depository institution may, on occasion, fall below the minimum deposit standard, and it would be extremely disruptive and harmful if the institution's status were to immediately and automatically change as a result. For example, an institution's insured status might be called into doubt if it fell below the minimum deposit standard even for an instant. Furthermore, an institution that qualified as a ''State bank'' might abruptly lose that status if its total non-trust deposits fell below the minimum deposit standard. Of course, an institution's deposit insurance continues until terminated by the FDIC.

The FDIC believes, however, that any perception that an institution might abruptly lose its insured status or its status as a ''State bank'' may cause uncertainty and disruption. Consequently, the FDIC has decided to modify the proposed rule to avoid such a result. The final rule provides that an insured depository institution (other than a newly insured institution) will be subject to a determination by the FDIC that the institution is not ''engaged in the business of receiving deposits other than trust funds'' and to termination of its insured status through administrative proceedings under section 8(p) of the FDI Act if the institution is below the minimum deposit standard on two consecutive call report dates. The term ''call report'' is used herein to refer collectively to the Consolidated Reports of Condition and Income, the Thrift Financial Report, and the Report of Assets and Liabilities of US Branches and Agencies of Foreign Banks. The call report dates are March 31st, June 30th, September 30th, and December 31st.

A brief discussion about section 8(p) as it relates to the institution's depositors is warranted. Under section 8(p) of the FDI Act, the FDIC is obligated to terminate the insured status of a depository institution that is not ''engaged in the business of receiving deposits other than trust funds.'' 12 U.S.C. 1818(p). A finding by the FDIC's Board of Directors that a depository institution is not ''engaged in the business of receiving deposits other than trust funds'' is conclusive. *Id.* Such

a finding, however, does not result in the immediate loss of deposit insurance. On the contrary, the institution remains insured for a period of time during which depositors are provided with notification of the date on which the institution's deposits will cease to be insured. See 12 CFR 308.124.

8. Should Operating Insured Depository Institutions Be Held to the Same Standard as Applicants for Deposit Insurance? In Other Words, Should the Standard Under Section 8 of the FDI Act (Involving Terminations) Be the Same as the Standard Under Section 5 (Involving Applications)? Should the FDIC Terminate the Insured Status of Any Operating Institution That Does Not Meet the Chosen Standard? Should an Operating Insured Institution Be Given a Certain Period of Time To Regain the Level of $500,000 After Falling Below That Level?

Of the five commenters responding on this question, all thought that operating insured depository institutions should be held to the same standard as applicants for deposit insurance. As noted above, two commenters thought that operating insured institutions should be given a period of time to regain the $500,000 minimum deposit standard after falling below it.

The FDIC agrees that operating insured depository institutions should be held to the same standard as applicants for deposit insurance, and the final rule is consistent with that principle. With regard to the grace period suggestion, the FDIC has modified the rule, as discussed above, to provide a period of time for an institution to regain the minimum deposit standard if the institution should fall below it.

9. Should the Same Standard Apply to the Definition of ''State bank'' Under Section 3 of the FDI Act? If not, What standard Should Apply? Why?

Of the seven commenters responding on this question, all thought that the same standard should apply to the definition of ''State bank'' under section 3 of the FDI Act, and four of the seven thought that the same standard should apply throughout the FDI Act.

In addition to the responses to the nine questions, one commenter suggested that the rule should be a ''safe harbor'' as opposed to a minimum standard. The FDIC intends a minimum standard. The FDIC does not believe that a safe harbor approach will adequately clarify the meaning of the phrase ''engaged in the business of receiving deposits other than trust funds.'' Under a safe harbor approach uncertainty would exist as to the status of an institution that did not satisfy the $500,000 standard. A primary purpose of the rule is to remove ambiguity and uncertainty in this area, and the safe harbor approach does not achieve that purpose. Consequently, the FDIC has modified the rule to make it clear that the rule's requirements are a minimum standard, not a safe harbor. However, the rule is also structured so that a failure to satisfy the $500,000 standard will not result in an automatic termination of an institution's status as an insured institution or as a ''State bank.'' Rather, such a failure would make the institution subject to termination proceedings under section 8(p).

V. Objections to the Rule

As noted above three commenters opposed the regulation. One opponent simply disagreed with the FDIC's interpretation of section 5 of the FDI Act. Another opponent, U.S. Senator Mary L. Landrieu, was opposed to the FDIC's adoption of the regulation and thought it inappropriate to promulgate a regulation while the *Heaton* v. *Monogram* litigation was pending.

The FDIC believes that it has acted properly in formalizing its interpretation of the FDI Act at this time. Because of the FDIC's statutory responsibility as a federal banking regulator, the FDIC has a strong interest in interpreting the FDI Act and in providing courts and private parties with guidance concerning its interpretation. Agencies often interpret their governing statutes during the course of litigation in order to provide courts and private litigants with needed guidance. Indeed, it is often litigation that discloses the need for such guidance. The Supreme Court cited this practice with approval in *Smiley* v. *Citibank (South Dakota), N.A.,* 517 U.S. 735 (1996), when it gave deference under the *Chevron* doctrine to a regulation interpreting the statutory term ''interest'' that was promulgated by the Comptroller of the Currency during the course of litigation. Additionally, it is appropriate for the FDIC to promulgate its statutory interpretation in the form of a formal regulation, in view of recent Supreme Court decisions restricting judicial deference in situations involving less formal interpretations of a statute. *See Christensen* v. *Harris County,* 529 U.S. 576 (2000); *U.S.* v. *Mead Corp.,* 121 S. Ct. 2164 (2001).

Indeed, this regulation presents a classic example of a federal agency acting appropriately in furtherance of its statutory responsibility. The FDIC decided many years ago, in the course of approving applications for deposit insurance, to interpret the statutory phrase ''engaged in the business of receiving deposits'' to include banking institutions with limited deposit-taking activity. Accordingly, the FDIC approved numerous applications for deposit insurance from such institutions over a period of more than thirty years. Because the ongoing litigation has disclosed a need for a more formal interpretation, the FDIC is adopting this rule interpreting the statutory phrase consistent with both the FDIC's longstanding interpretation and other federal and state banking law.

As noted above, the regulation is being issued to eliminate the current uncertainty and provide for consistency in the interpretation of the FDI Act. Consequently, the FDIC believes that it is not only appropriate but essential for the FDIC to issue a regulation clarifying the meaning of the phrase ''engaged in the business of receiving deposits other than trust funds.''

The third opposition letter was submitted by a law firm on behalf of five consumer advocacy groups. These consumer groups are the National Consumer Law Center, the Consumer Federation of America, Consumers Union, U.S. Public Interest Research Group and the National Association of Consumer Advocates. In their letter, the consumer groups presented three arguments against the adoption of the proposed regulation. Each of these arguments is addressed in turn below.

First, the consumer groups argued that the integrity of the regulatory process will be undermined by asserting a position that supports the defendant in the *Heaton* v. *Monogram* litigation. This argument ignores the nature and extent of the FDIC's statutory duties under the FDI Act. The FDIC cannot discharge its duties, for example, under section 5 of the FDI Act (involving applications for deposit insurance) and section 8 of the Act (involving terminations of insurance) without interpreting the statutory phrase. For this reason, the FDIC cannot be neutral. The FDIC must interpret the phrase ''engaged in the business of receiving deposits other than trust funds'' in order to carry out its duties. Otherwise, the FDIC would be unable to make any decisions on any applications for deposit insurance. As pointed out above, it is important to note that the FDIC's interpretation has existed for many years prior to this litigation. It was not established with the purpose of either helping or hurting any party; rather, it was established with the

purpose of fairly and consistently administering the statute.

Second, the consumer groups argued that the FDIC's interpretation as codified in the proposed regulation conflicts with the FDI Act. This argument is based upon the statute's use of the word ''business'' and the words ''receiving deposits.'' According to the consumer groups, these words mean that a depository institution must receive an ''ongoing'' stream of deposits in order to be ''engaged in the business of receiving deposits other than trust funds.''

The FDIC does not believe that the interpretation offered by the consumer groups is correct. The statute refers to ''business,'' not ''primary business.'' See *Royal Foods Co. Inc.* v. *RJR Holdings Inc.,* 252 F.3d 1102 (9th Cir. 2001). The statute also recognizes that a single deposit can be accepted or ''received'' many times through rollovers. See 12 U.S.C. 1831f(b). Thus, the word ''receiving'' in the statute is consistent with the holding—and periodic renewal or rollover—of a single certificate of deposit. Similarly, the plural word ''deposits'' is not inconsistent with the holding of a single deposit account because multiple deposits of funds can be made into a single account. In addition, the periodic accrual of interest represents the ''receiving'' of ''deposits.'' Moreover, the statute defines ''deposit'' in such a way as to treat ''receiving'' and ''holding'' with equal significance for purposes of the definition of ''deposit.'' See 12 U.S.C. 1813(l)(1).

In short, the proposed regulation is consistent with the FDI Act. This conclusion is confirmed by *Meriden Trust and Safe Deposit Company* v. *FDIC,* 62 F.3d 449 (2d Cir. 1995). In that case, the court found that a bank was ''engaged in the business of receiving deposits other than trust funds'' even though the bank held only two accounts with a combined balance of only $200,000. Both of those accounts were from affiliates: one from the bank's parent company and one from its sister bank.

In presenting their second argument, the consumer groups asserted that the *Meriden* case is distinguishable from the *Heaton* case. They noted that the two cases involved separate sections of the FDI Act (though both cases involved the same definition of ''State bank''). However, the meaning of being ''engaged in the business of receiving deposits other than trust funds'' should not vary depending upon which section of the FDI Act is under consideration and the consumer groups have presented no argument justifying such variation. Such an approach would lead to inconsistencies, uncertainties and confusion and would be contrary to the main purpose of the regulation which is to clarify the law for the benefit of depository institutions as well as the general public.

Third, the consumer groups argued that the regulation will harm the public. This argument is based upon the proposition that an out-of-state bank should not be able to avoid the host state's consumer protection laws. This argument is inconsistent with the express language of section 27 of the FDI Act, 12 U.S.C. 1831d. Through section 27, Congress has specifically provided that an out-of-state ''State bank'' may export interest rates into a host state notwithstanding the host state's laws. This section was enacted to provide state banks competitive equality with national banks.

Finally, the law firm representing the plaintiff in the *Heaton* v. *Monogram* litigation submitted a letter objecting to the FDIC's consideration of two other letters (both supporting the proposed regulation). The law firm argued that the two letters in question had been received by the FDIC after the expiration of the comment period.

In fact, one of the two letters was received by the FDIC on the last day of the comment period (July 18, 2001). This letter was timely. The second letter supported the proposed regulation but in broad, general terms. Substantively, it was similar to a number of other letters. The FDIC did not rely upon this letter or another late-filed letter in its consideration of the final rule.

The FDIC has carefully considered all of the timely comments received; most of the comments received are consistent with the FDIC's views and suggest no changes to the rule. However, as noted above, the FDIC has modified the proposed rule to incorporate certain grace periods suggested in the comments received in response to questions 7 and 8, and has clarified the fact that the rule is not a safe harbor.

VI. Reasons for the Minimum Deposit Standard

There are a number of substantial reasons for adopting the final rule. First, the statute is ambiguous (as discussed above). The FDIC in General Counsel Opinion 12 (GC12) discussed the statutory language at length. *See* 65 FR 14568, 14569 (March 17, 2000). The statute recognizes that a single deposit can be accepted or ''received'' many times through rollovers. *See* 12 U.S.C. 1831f(b) (dealing with the acceptance of brokered deposits). Thus, the word ''receiving'' in the statute can be reconciled with the holding—and periodic renewal or rollover—of a single deposit. Similarly, the plural word ''deposits'' is not inconsistent with the holding of a single deposit account because multiple deposits of funds can be made into a single account. A depositor might, for example, make a deposit of funds every month into the same account. The accrual of interest would represent an additional deposit into the same account. In the case of a certificate of deposit, the deposit would be replaced with a new deposit at maturity. Moreover, the statute defines ''deposit'' in such a way as to treat ''receiving'' and ''holding'' with equal significance for purposes of the definition of ''deposit.'' See 12 U.S.C. 1813(l)(1).

Second, as discussed at length in General Counsel Opinion No. 12, the legislative history is inconclusive. *See* H.R. Rep. No. 2564, reprinted in 1950 U.S.C.C.A.N. 3765, 3768. Third, the FDIC has approved applications from many non-traditional depository institutions that intended to maintain only one or a very limited number of non-trust deposit accounts. This practice began at least as early as 1969 with Bessemer Trust Company (Bessemer) located in Newark, New Jersey. Bessemer offered checking accounts to its own trust customers but did not offer checking accounts or any other type of non-trust accounts to the general public. Despite this limitation on Bessemer's deposit-taking activities, the FDIC approved Bessemer's application for deposit insurance. The FDIC continued to approve such applications (*i.e.,* applications from institutions with very limited deposit-taking activities) from the 1970s to the present. These non-traditional depository institutions have included trust companies, credit card banks and other specialized institutions. For example, one depository institution planned to hold no accounts except escrow accounts relating to mortgage loans. Another depository institution planned to offer deposits only to its affiliate's customers.

Fourth, the Bank Holding Company Act (BHCA) contemplates the existence of depository institutions that are insured by the FDIC even though they do not accept a continuing stream of non-trust deposits from the general public. *See* 12 U.S.C. 1841(c). In the BHCA, the definition of ''bank'' includes banks insured by the FDIC. *See* 12 U.S.C. 1841(c)(1). A list of exceptions includes institutions functioning solely in a trust or fiduciary capacity if several conditions are satisfied. The conditions related to deposit-taking are: (1) All or

substantially all of the deposits of the institution must be trust funds; (2) insured deposits of the institution must not be offered through an affiliate; and (3) the institution must not accept demand deposits or deposits that the depositor may withdraw by check or similar means. *See* 12 U.S.C. 1841(c)(2)(D)(i)–(iii). The significant conditions are (1) and (2). The first condition provides that all or substantially all of the deposits of the institution must be trust funds; the second condition involves ''insured deposits.'' Thus, the statute contemplates that a trust company—functioning solely as a trust company and holding no deposits (or substantially no deposits) except trust deposits—could hold ''insured deposits.'' In other words, the BHCA contemplates (without requiring) that an institution could be insured by the FDIC even though the institution does not accept non-trust deposits from the general public.

Fifth, the leading case indicates that a depository institution may be ''engaged in the business of receiving deposits other than trust funds'' even though the institution holds a very small amount of non-trust deposits. See *Meriden Trust and Safe Deposit Company* v. *FDIC,* 62 F.3d 449 (2d Cir. 1995). Indeed, this case indicates that an amount as small as $200,000 is a sufficient amount of non-trust deposits.

Sixth, some state banking statutes contemplate the existence of FDIC-insured depository institutions that are severely restricted in their ability to accept non-trust deposits from the general public. For example, a Virginia statute provides that a general business corporation may acquire the voting shares of a ''credit card bank'' only if certain conditions are satisfied. See Va. Code 6.1–392.1.A. These conditions comprise the definition of a ''credit card bank.'' See Va. Code 6.1–391. These conditions include the following: (1) The bank may not accept demand deposits; and (2) the bank may not accept savings or time deposits of less than $100,000. Indeed, the statute provides that a ''credit card bank'' may accept savings or time deposits (in amounts in excess of $100,000) only from affiliates of the bank having their principal place of business outside the state. See Va. Code 6.1–392.1.A.3–4. In other words, the Virginia statute prohibits the acceptance of any deposits from the general public. At the same time, the statute requires the deposits of the bank to be federally insured. See Va. Code 6.1–392.1.A.4.

The figure of $500,000 is being utilized for several reasons. First, it is more than a nominal sum. Indeed, it is greater than the amount involved in the leading case of *Meriden Trust and Safe Deposit Company* v. *FDIC*, 62 F.3d 449 (2d Cir. 1995). In that case, the court found that only $200,000 of non-trust deposits was a sufficient amount. Second, the figure of $500,000 is not so great that it would prevent non-traditional depository institutions from obtaining FDIC insurance. As previously mentioned, the Bank Holding Company Act contemplates the existence of depository institutions that are insured by the FDIC even though they do not accept a continuing stream of non-trust deposits from the general public. *See* 12 U.S.C. 1841(c). Also, some state banking statutes contemplate the existence of FDIC-insured depository institutions that are severely restricted in their ability to accept non-trust deposits from the general public. See, e.g., Va. Code 6.1–392.1.A.4. Third, $500,000 is the amount of non-trust deposits allowed by the FDIC in recent years in connection with a number of applications for deposit insurance. Applications involving the precise amount of $500,000 can be traced as far back as 1991.

As previously explained, the purpose of the regulation is to create uniformity and certainty. The choice of any specific dollar figure would serve this purpose. For the reasons set forth above, the FDIC has chosen $500,000.

Paperwork Reduction Act

The final rule does not involve any collections of information under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Consequently, no information has been submitted to the Office of Management and Budget for review.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the FDIC hereby certifies that the final rule will not have a significant economic impact on a substantial number of small entities. The final rule will apply to all FDIC-insured depository institutions and will impose no new reporting, recordkeeping or other compliance requirements. Although the final rule specifies that depository institutions must hold non-trust deposits in the amount of $500,000 or more in order to be ''engaged in the business of receiving deposits other than trust funds,'' the rule does not create a new requirement. Rather, the final rule clarifies an existing requirement. Moreover, the final rule is consistent with the standard already applied to depository institutions by the FDIC. Accordingly, the Act's requirements relating to an initial and final regulatory flexibility analysis are not applicable.

Impact on Families

The FDIC has determined that this final rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681).

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Pub. L. 104–121) provides generally for agencies to report rules to Congress for review. The reporting requirement is triggered when the FDIC issues a final rule as defined by the Administrative Procedure Act (APA) at 5 U.S.C. 551. Because the FDIC is issuing a final rule as defined by the APA, the FDIC will file the reports required by SBREFA. The Office of Management and Budget has determined that this final rule does not constitute a ''major rule'' as defined by SBREFA.

List of Subjects in 12 CFR Part 303

Administrative practice and procedure, Authority delegations (Government agencies), Banks, banking, Bank merger, Branching, Foreign investments, Golden parachute payments, Insured branches, Interstate branching, Reporting and recordkeeping requirements, Savings associations.

The Board of Directors of the Federal Deposit Insurance Corporation hereby amends part 303 of title 12 of the Code of Federal Regulations as follows:

PART 303—FILING PROCEDURES AND DELEGATIONS OF AUTHORITY

1. The authority citation for part 303 continues to read as follows:

Authority: 12 U.S.C. 378, 1813, 1815, 1816, 1817, 1818, 1819 (Seventh and Tenth), 1820, 1823, 1828, 1831a, 1831e, 1831o, 1831p–1, 1835a, 3104, 3105, 3108, 3207; 15 U.S.C. 1601–1607.

2. New § 303.14 is added to subpart A to read as follows:

§ 303.14 Being ''engaged in the business of receiving deposits other than trust funds.''

(a) Except as provided in paragraphs (b), (c), and (d) of this section, a depository institution shall be ''engaged in the business of receiving deposits other than trust funds'' only if it

maintains one or more non-trust deposit accounts in the minimum aggregate amount of $500,000.

(b) An applicant for federal deposit insurance under section 5 of the FDI Act, 12 U.S.C. 1815(a), shall be deemed to be ''engaged in the business of receiving deposits other than trust funds'' from the date that the FDIC approves deposit insurance for the institution until one year after it opens for business.

(c) Any depository institution that fails to satisfy the minimum deposit standard specified in paragraph (a) of this section as of two consecutive call report dates (i.e., March 31st, June 30th, September 30th, and December 31st) shall be subject to a determination by the FDIC that the institution is not ''engaged in the business of receiving deposits other than trust funds'' and to termination of its insured status under section 8(p) of the FDI Act, 12 U.S.C. 1818(p). For purposes of this paragraph, the first three call report dates after the institution opens for business are excluded.

(d) Notwithstanding any failure by an insured depository institution to satisfy the minimum deposit standard in paragraph (a) of this section, the institution shall continue to be ''engaged in the business of receiving deposits other than trust funds'' for purposes of section 3 of the FDI Act until the institution's insured status is terminated by the FDIC pursuant to a proceeding under section 8(a) or section 8(p) of the FDI Act. 12 U.S.C. 1818(a) or 1818(p).

By order of the Board of Directors.

Dated at Washington, DC, this 23rd day of October 2001.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 01–27198 Filed 10–29–01; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–175–AD; Amendment 39–12484; AD 2001–22–05]

RIN 2120–AA64

Airworthiness Directives; Short Brothers Model SD3 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Short Brothers Model SD3 series airplanes, that requires an inspection to find discrepancies of the hydraulic pipelines to the 7P panel and adjacent electrical wiring harnesses, and corrective action, if necessary. This action is necessary to find and fix such discrepancies, which could result in electrical arcing between the hydraulic lines and adjacent wiring, and a potential fire. This action is intended to address the identified unsafe condition.

DATES: Effective December 4, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 4, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Short Brothers, Airworthiness & Engineering Quality, P.O. Box 241, Airport Road, Belfast BT3 9DZ, Northern Ireland. 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: 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: 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 Short Brothers Model SD3 series airplanes was published in the **Federal Register** on August 17, 2001 (66 FR 43126). That action proposed to require an inspection to find discrepancies of the hydraulic pipelines to the 7P panel and adjacent electrical wiring harnesses, and corrective action, if necessary.

Comments

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

Conclusion

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

Cost Impact

The FAA estimates that 75 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $4,500, 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:

2001–22–05 Short Brothers, PLC: Amendment 39–12484. Docket 2001–NM–175–AD.

Applicability: This AD applies to the airplanes listed in Table 1, certificated in any category:

TABLE 1.—APPLICABILITY

Short Brothers model	Description
1. SD3–SHERPA series airplanes.	On which Short Brothers Modification K2239 has not been accomplished.
2. SD3–60 SHERPA series airplanes.	On which Short Brothers Modification K6109 has not been accomplished.
3. SD3–60 series airplanes.	On which Short Brothers Modification A8684 has not been accomplished.
4. SD3–30 series airplanes.	On which Short Brothers Modification P4810 has not been accomplished.

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 (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 find and fix discrepancies of the hydraulic pipelines to the 7P panel and adjacent electrical wiring harnesses, which could result in electrical arcing between the hydraulic lines and adjacent wiring, and a potential fire, accomplish the following:

Inspection/Corrective Action

(a) Within 90 days after the effective date of this AD, do a detailed visual inspection to find discrepancies (inadequate clearance, chafing, or damage) of the hydraulic pipelines to the 7P panel and adjacent electrical wiring harnesses, per the Accomplishment Instructions of Shorts Service Bulletins SD3 SHERPA–24–5, SD330–24–29, SD360–24–25, or SD360 SHERPA–24–4, all dated April 30, 2001; as applicable. Before further flight, fix any discrepancies found per the applicable service bulletin.

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 Shorts Service Bulletin SD3 SHERPA–24–5, dated April 30, 2001; Shorts Service Bulletin SD330–24–29, dated April 30, 2001; Shorts Service Bulletin SD360–24–25, dated April 30, 2001; or Shorts Service Bulletin SD360 SHERPA–24–4, dated April 30, 2001; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Short Brothers, Airworthiness & Engineering Quality, P.O. Box 241, Airport Road, Belfast BT3 9DZ, Northern Ireland. 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 British airworthiness directives 006–04–2001, 007–04–2001, 008–04–2001, and 009–04–2001.

Effective Date

(e) This amendment becomes effective on December 4, 2001.

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

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–26956 Filed 10–29–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–317–AD; Amendment 39–12478; AD 2001–21–07]

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, for certain airplanes, revising the Airplane Flight Manual, and, for all airplanes, performing repetitive inspections for wear or damage of the inlet check valves and inlet adapters of the override/jettison pumps, and corrective actions, if necessary. This amendment applies to fewer airplanes than the existing AD and requires rework of certain components, which ends the repetitive inspection requirement. These actions are necessary to ensure that the flight crew is advised of the hazards of dry operation of the override/jettison pumps of the center wing fuel tank, and to prevent wear or damage to the inlet check valves and inlet adapters of the override/jettison pumps, which could result in a fire or explosion in the fuel tank during dry (no fuel) operation. This action is intended to address the identified unsafe condition.

DATES: Effective December 4, 2001.

The incorporation by reference of Boeing Service Bulletin 747–28A2212, Revision 3, dated August 3, 2000, as listed in the regulations, is approved by the Director of the Federal Register as of December 4, 2001.

The incorporation by reference of Boeing Alert Service Bulletin 747–28A2212, Revision 2, dated May 14, 1998, as listed in the regulations, was approved previously by the Director of the Federal Register as of August 24, 1998 (63 FR 42210, August 7, 1998).

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: Sulmo Mariano, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2686; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 98–16–19, amendment 39–10695 (63 FR 42210, August 7, 1998), which is applicable to all Boeing Model 747 series airplanes, was published in the **Federal Register** on February 15, 2000 (66 FR 10393). The action proposed to continue to require, for certain airplanes, revising the Airplane Flight Manual, and, for all airplanes, performing repetitive inspections for wear or damage of the inlet check valves and inlet adapters of the override/jettison pumps, and corrective actions, if necessary. The action also proposed to apply to fewer airplanes than the existing AD and require rework of certain components, which would end the repetitive inspection requirement.

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.

Extend Compliance Time/Delay Terminating Action

Several commenters ask that the compliance time of 18 months after the effective date of the AD, as specified in paragraph (d) of the proposed rule, be extended as follows:

Three commenters state that the compliance time should be extended to within 60 months after the effective date of the AD. One of the commenters asks for an extension to 10,000 flight cycles if a 6-year compliance time is too long. The commenters note that the current repetitive inspections are adequate to address the described unsafe condition by ensuring the integrity of the inlet check valves and override/jettison pump inlet adapters. One commenter adds that the wear limits established and contained in Boeing Alert Service Bulletins 747–28A2212, Revision 1, dated April 23, 1998, and Revision 2, dated May 14, 1998 (referenced in the proposed rule as two of the correct sources of service information for doing the specified actions), are conservative and provide an adequate margin to prevent contact between the inlet check valve and the override/jettison pump inlet inducer/impeller until the modification is accomplished.

Additionally, one commenter (the airplane manufacturer) states that it is not aware of any reports since the issuance of AD 98–16–19, of loosening of the inlet check valve, which is the more significant failure mode per the referenced service bulletin, because it could lead to steel-on-steel contact. AD 98–16–19 requires, among other things, repetitive inspections for wear or damage of the inlet check valves and inlet adapters of the override/jettison pumps. The commenters state that because the unsafe condition in the proposed rule is adequately addressed by the repetitive inspection requirements in that AD, the requested 60-month compliance time is reasonable. This would allow operators to complete the rework of the override/jettison pump housing (installation of the new check valve), which requires fuel tank entry, during a regular maintenance visit when a tank entry is included as part of the maintenance program for most operators. This would minimize the need for multiple tank entries and collateral fuel tank component damage that could result from the entries. An 18-month compliance period would result in unscheduled maintenance visits and increased costs associated with airplane out-of-service time.

The airplane manufacturer also is working with the parts manufacturer to develop an improved override/jettison pump electrical connector that will be proposed as an alternative method of compliance to AD 97–03–17, amendment 39–9922 (62 FR 5748, February 7, 1997). That AD requires an inspection of fuel boost pumps and fuel override/jettison pumps for leakage and checking the electrical resistance of the override/jettison pump wiring insulation. The improved pump electrical connector should be available for retrofit early in the fourth quarter of 2001. A 60-month compliance time would allow the override/jettison pump motor impeller assembly to be reworked during a maintenance visit, at which time both the new inlet adapter and new electrical connector could be installed.

A fourth commenter asks that the compliance time be extended to 54 months after the effective date of the AD to allow for the incorporation of new check valves and inlet adapters in the other airplane fuel tanks, an action not specifically required by this AD, but recommended by the airplane manufacturer. The commenter states that, in the long term, this will prevent the inadvertent installation of an unmodified override/jettison pump in a center wing tank pump housing with a modified inlet check valve, leading to a more rapid failure than is currently occurring. The commenter also states that enhanced endurance testing should be allowed to validate the 30,000 hour wear rate claims and extend that rate to 60,000 hours for the original equipment manufacturer's specified design life limit of the override/jettison pump.

A fifth commenter, the parts manufacturer, states that it is the sole manufacturer of the subject override/jettison pumps, housings, and repair kits and has some constraints on providing the kits, as well as performing the repair and override/jettison pump modification at its overhaul facility. The commenter notes that the maximum monthly production capacity for each kit type is approximately 500 kits per month. All kits are subject to a 12-week lead time following customer order placement. The override/jettison pump overhaul and repair facility can accommodate approximately 200 pump upgrades per month over and above existing pump repair activities. The commenter adds that, in prior discussions with operators, it was noted that the upgrade of the override/jettison pumps on the affected 747 fleet would take up to six years to accomplish. The commenter questions the viability of accomplishing such an upgrade within the proposed 18 months. The commenter states that, although it could deliver the parts required in the time specified, the extensive maintenance tasks necessary to assess and modify the override/jettison pump housings would impose a massive logistics and scheduling burden on the operators.

A sixth commenter states that, due to the spares shortage and possible additional changes in AD 97–03–17, until a final decision is made, it prefers to continue with the repetitive inspections and replacement of any defective override/jettison pumps as required by AD 98–16–19. The commenter notes that after a final decision is made it will comply with all the requirements at one time. The commenter adds that complying with all the requirements at one time will resolve the problems related to spares shortage, long turnaround time for modification by the manufacturer, pump interchangeability, flight

schedule interruptions, and extensive ground time.

A seventh commenter asks that the compliance time be extended to 6 years after the effective date of the AD, on the condition that the repetitive inspection interval is reduced to 5,000 flight hours or 1 year. The commenter gives 3 reasons for this extension:

(1) Replacing the housing inlet check valve necessitates entering the center wing fuel tank, which requires a minimum of 2 days of airplane immobilization, and partially prevents concurrent routine maintenance on the airplane.

(2) The parts manufacturer has proposed that operators extend the modification to 6 years so the inside tank modification can be implemented during heavy maintenance. Thus the parts manufacturer can have more time to supply parts for the world fleet.

(3) The parts manufacturer is working with the airplane manufacturer to develop an improved fuel pump electrical connector that will be proposed as an alternative method of compliance to the insulation resistance check required by AD 97–03–17. The commenter asks to be allowed to wait and do all the terminating actions at one time.

The FAA agrees with the commenters that the compliance time required by paragraph (d) of the final rule should be extended somewhat to ensure that enough parts are available to do the required actions within the specified compliance time. In developing an appropriate compliance time for the terminating action required by the final rule, we considered not only the degree of urgency associated with addressing the unsafe condition, but the practical aspect of incorporating the required rework of the existing override/jettison pump housing and impeller motor assembly on the Model 747 fleet in a timely manner. It is our intent in this final rule to have the terminating action done within the time frame of a regular maintenance interval. We took the commenters' recommendations into account, as well as the time necessary to do the specified actions, and we find that a 3-year compliance time should correspond with the regular maintenance schedules of the majority of affected operators. An extension of the compliance time to 3 years will not adversely affect safety because the inspections required by paragraph (b) of the final rule will provide an acceptable level of safety until the terminating action required by paragraph (d) is done. Paragraph (d) of the final rule has been changed accordingly.

The FAA does not agree that the terminating action in this final rule can be delayed in order to do the actions concurrently with AD 97–03–17. These two ADs address different unsafe conditions of the same fuel override/jettison pump, and the associated modifications differ as well. Although the override/jettison pumps for the center wing fuel tank are removed to do the modifications associated with both ADs, the functional tests after installation of the modified pump should identify any problems with the override/jettison pump before the airplane is released for revenue service. Therefore, removing those pumps twice to accomplish the terminating actions for AD 97–03–17 and this AD separately, does not have an adverse effect on the safety of the 747 fleet.

Clarify Wording in Paragraphs (d) and (e)

One commenter asks that paragraphs (d) and (e) of the proposed rule be changed to clarify that the actions are applicable to the center wing tanks only, as specified in the referenced service bulletin. We agree and have changed the wording in paragraphs (d) and (e) of this final rule for clarification.

Change/Delete Paragraph (e)

Two commenters ask that paragraph (e) of the proposed rule; which specifies that, as of the effective date of the AD, no unmodified override/jettison pump housings or impeller motor assemblies may be installed; be changed. The commenter notes that this would require replacement of the override/jettison pump inlet check valve on airplanes not scheduled for maintenance. This would ground airplanes and necessitate a fuel tank entry. The commenter adds that unscheduled fuel tank entries present potential problems with collateral damage and additional out-of-service time for the airplanes. The commenter asks that paragraph (e) be changed to state, ''No part number listed in the Existing Part Number column of the table in Paragraph 2.E. of Boeing Service Bulletin 747–28A2212, Revision 3, shall be installed after the effective date of the AD. An existing part number motor impeller assembly can be used on aircraft that have existing part number housings installed, until the sunset date of the AD.''

Another commenter asks that it be allowed to use ''Existing Part Numbers'' for the center wing tank positions, and for the main 2, main 3, and horizontal stabilizer tank positions during the compliance time specified in the proposed rule. The commenter states that the paragraph (e) of the proposed rule requires a tank entry to modify the override/jettison pump housing each time an unmodified impeller motor assembly has to be replaced.

One commenter, the airplane manufacturer, asks that paragraph (e) of the proposed rule be deleted. The commenter states that the described unsafe condition has been adequately mitigated and that the old parts (with a part number listed in the Existing Part Number column of the table in Paragraph 2.E), should be allowed for installation until the compliance period ends, subject to the limitations described in paragraph 2.E., Existing Parts Accountability, of the referenced service bulletin. The commenter adds that this is necessary for motor impeller assemblies because an operator would install a new inlet check valve in the event a check valve had to be replaced. Installation of a new valve would necessitate installation of a new motor impeller assembly, if not already installed. The commenter notes that once a new part is installed, the replacement part must be of the new configuration.

After careful review of the comments provided, specifically the comment from the airplane manufacturer, the FAA has concluded that paragraph (e) of this final rule should be deleted. We have determined that paragraph (e) can be removed without adversely affecting safety, in that the terminating action specified in Part 5 of the Accomplishment Instructions of Boeing Service Bulletin 747–28A2212, Revision 3, cautions that operators should not install reworked components with non-reworked components because rapid wear of those components will occur. Paragraph (e) of this final rule has been deleted accordingly.

Conclusion

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

Cost Impact

There are approximately 1,100 airplanes of the affected design in the worldwide fleet. The FAA estimates that 250 airplanes of U.S. registry will be affected by this AD.

For affected airplanes, the AFM revision currently required by AD 98–16–19 takes approximately 1 work hour

per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the FAA estimates that the cost impact of this action is $60 per airplane.

The inspections currently required by AD 98–16–19 take approximately 12 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the FAA estimates that the cost impact of this action on U.S. operators is $180,000, or $720 per airplane, per inspection cycle.

The rework required in this AD action will take approximately 6 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $1,978 per airplane. Based on these figures, the FAA estimates that the cost impact of the required replacement on U.S. operators is $584,500, or $2,338 per airplane. The FAA has been advised that manufacturer warranty remedies may be available for labor costs and parts associated with accomplishing the required rework. Therefore, the future economic cost impact of this action on U.S. operators may be less than the cost impact figure indicated above.

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 39–10695 (63 FR 42210, August 7, 1998), and by adding a new airworthiness directive (AD), amendment 39–12478, to read as follows:

2001–21–07 Boeing: Amendment 39–12478. Docket 2000–NM–317–AD. Supersedes AD 98–16–19, Amendment 39–10695.

Applicability: Model 747 series airplanes, line numbers 1 through 1251 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e)(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 ensure that the flightcrew is advised of the hazards of dry operation of the override/jettison pumps of the center wing fuel tank, and to prevent wear or damage to the inlet check valves and inlet adapters of the override/jettison pumps, which could result in a fire or explosion in the fuel tank during dry operation, accomplish the following:

Restatement of Requirements of AD 98–16–19:

Airplane Flight Manual Revision

(a) For airplanes that have accumulated 20,000 total hours time-in-service or more as of August 24, 1998 (the effective date of AD 98–16–19, amendment 39–10695): Within 14 days after August 24, 1998, revise the Limitations section of the FAA-approved Airplane Flight Manual (AFM) to include the following procedures. This may be accomplished by inserting a copy of this AD into the AFM.

''If the center tank override/jettison fuel pumps are to be used, there must be at least 17,000 pounds (7,720 kilograms) of fuel in the center tank prior to engine start.

Do not operate the center tank override/jettison fuel pumps with less than 7,000 pounds (3,200 kilograms) of fuel in the center tank. For airplanes with an inoperative center tank scavenge system, this 7,000 pounds of center tank fuel must be considered unusable.

If the center tank override/jettison fuel pumps circuit breakers are tripped, do not reset.''

Repetitive Inspections and Corrective Actions

(b) Prior to the accumulation of 10,000 total hours time-in-service, or within 90 days after August 24, 1998, whichever occurs later, accomplish the requirements of paragraphs (b)(1) and (b)(2) of this AD, in accordance with the Accomplishment Instructions specified in Boeing Alert Service Bulletin 747–28A2212, Revision 2, dated May 14, 1998, or Revision 3, dated August 3, 2000.

(1) Perform a detailed visual inspection for wear or damage of the inlet check valve of the left and right override/jettison pumps of the center wing fuel tank.

(i) If the inlet check valve passes all wear and damage criteria, as specified in Figure 3 of the service bulletin, accomplish the actions specified in paragraph (b)(1)(i)(A), (b)(1)(i)(B), or (b)(1)(i)(C) of this AD, as applicable.

(A) If the wear to the stainless steel disk is less than or equal to 0.70 inch, and does not penetrate the disk, repeat the inspection thereafter at intervals not to exceed 10,000 hours time-in-service after the last inspection, until paragraph (d) of this AD has been done.

(B) If the wear to the stainless steel disk is greater than 0.70 inch, and does not penetrate the disk, repeat the inspection thereafter at intervals not to exceed 1,000 hours time-in-service after the last inspection, until paragraph (d) of this AD has been done.

(C) If the wear penetrates the stainless steel disk of the inlet check valve, prior to further flight, accomplish the actions specified in paragraph (b)(1)(ii) of this AD.

(ii) If the inlet check valve fails any wear or damage criteria, as specified in Figure 3 of the service bulletin, prior to further flight, replace the existing check valve with a new or serviceable check valve, in accordance with the service bulletin. Repeat the inspection thereafter at intervals not to exceed 10,000 hours time-in-service after the last inspection, until paragraph (d) of this AD has been done.

(2) Perform a detailed visual inspection for wear or damage of the inlet adapter of the left and right override/jettison pumps of the center wing fuel tank.

(i) If the wear to the inlet adapter is less than or equal to 0.50 inch, prior to further flight, reinstall the existing override/jettison pump, in accordance with the alert service bulletin. Repeat the inspection thereafter at intervals not to exceed 10,000 hours time-in-service after the last inspection, until paragraph (d) of this AD has been done.

(ii) If the wear to the inlet adapter is greater than 0.50 inch, but less than 0.60 inch, prior to further flight, accomplish the actions required by either paragraph (b)(2)(ii)(A) or (b)(2)(ii)(B), in accordance with the service bulletin:

(A) Install a new or serviceable override/jettison pump, and repeat the inspection thereafter at intervals not to exceed 10,000 hours time-in-service after the last inspection, until paragraph (d) of this AD has been done; or

(B) Reinstall the existing override/jettison pump, and repeat the inspection thereafter at intervals not to exceed 1,000 hours time-in-service after the last inspection, until paragraph (d) of this AD has been done.

(iii) If the wear to the inlet adapter is greater than or equal to 0.60 inch, prior to further flight, install a new or serviceable override/jettison pump, in accordance with the service bulletin. Repeat the inspection thereafter at intervals not to exceed 10,000 hours time-in-service after the last inspection, until paragraph (d) of this AD has been done.

Note 2: Boeing Alert Service Bulletin 747–28A2212, Revision 2, dated May 14, 1998, and Revision 3, dated August 3, 2000, include figures that illustrate specific areas to inspect for wear and damage.

Note 3: Accomplishment of the actions specified in paragraph (b) of this AD prior to August 24, 1998, in accordance with Revision 1 of Boeing Alert Service Bulletin 747–28A2212, dated April 23, 1998, is considered acceptable for compliance with paragraph (b) of this AD.

Terminating Action for Paragraph (a)

(c) Accomplishment of the actions specified by paragraph (b) of this AD constitutes terminating action for the requirements of paragraph (a) of this AD. Following accomplishment of those actions, the AFM revision may be removed from the AFM.

New Requirements of this AD:

Replacement of Pump Housing and Impeller Motor Assembly

(d) Within 36 months after the effective date of this AD: Rework the existing pump housing and impeller motor assembly, including replacing the existing inlet check valve and inlet adapter in the center wing fuel tank with new, improved parts; in accordance with Boeing Service Bulletin 747–28A2212, Revision 3, dated August 3, 2000. This replacement ends the requirements of paragraphs (a) and (b) of this AD.

Note 4: Boeing Service Bulletin 747–28A2212, Revision 3, references Crane Hydro-Aire Service Bulletins 60–703–28–33, 60–703–28–35, 60–721–28–5, and 60–723–28–5, as secondary sources of information for the rework of the pump housing and impeller motor assembly.

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

(2) Alternative methods of compliance, approved previously in accordance with AD 98–16–19, amendment 39–10695, are approved as alternative methods of compliance with the corresponding requirements of this AD.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(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 (a) of this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 747–28A2212, Revision 2, dated May 14, 1998; and Boeing Service Bulletin 747–28A2212, Revision 3, dated August 3, 2000; as applicable.

(1) The incorporation by reference of Boeing Service Bulletin 747–28A2212, Revision 3, dated August 3, 2000, is approved by the Director of the Federal Register as of December 4, 2001.

(2) The incorporation by reference of Boeing Alert Service Bulletin 747–28A2212, Revision 2, dated May 14, 1998, was approved previously by the Director of the Federal Register as of August 24, 1998 (63 FR 42210, August 7, 1998).

(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 4, 2001.

Issued in Renton, Washington, on October 17, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–26712 Filed 10–29–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–122–AD; Amendment 39–12475; AD 2001–21–04]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F.28 Mark 0070 and 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Fokker Model F.28 Mark 0070 and 0100 series airplanes, that requires revising the Airworthiness Limitations Section of the Instructions for Continued Airworthiness to incorporate life limits for certain items and inspections to detect fatigue cracking in certain structures. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to ensure that fatigue cracking of certain structural elements is detected and corrected; such fatigue cracking could adversely affect the structural integrity of these airplanes. This action is intended to address the identified unsafe condition.

DATES: Effective December 4, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 4, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands. 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: 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 Fokker Model

F.28 Mark 0070 and 0100 series airplanes was published in the **Federal Register** on October 13, 2000 (65 FR 60897). That action proposed to require revising the Airworthiness Limitations Section of the Instructions for Continued Airworthiness to incorporate life limits for certain items and inspections to detect fatigue cracking in certain structures.

Comments

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

Requests To Revise the Cost Estimate

On behalf of one of its members, the Air Transport Association (ATA) of America states that it considers that the inspections require access to multiple areas of the airplane and are scheduled at different time intervals. Therefore, the 1-hour time estimate in the proposed AD is not valid and needs to be adjusted. The member airline also made that same statement.

The FAA does not concur that the proposed cost estimate should be revised. We based our estimate on the fact that the action in paragraph (a) of the proposed AD requires only a revision to the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness by incorporating certain instructions into the ALS. This action should take no longer than 1 hour to accomplish. Although this AD requires only a revision to the ALS, we point out that the inspections included in the ALS will then be required by 14 CFR parts 43 and 91. Because operators must comply with the inspections included in the ALS to maintain the airplane properly, it is unnecessary for our cost estimate to include the time required for such inspections. Of course, operators that have previously incorporated the ALS revision into their maintenance programs are given credit for having previously accomplished the requirements of this AD, as allowed by the phrase, ''unless accomplished previously.'' No change to the cost estimate in the final rule is necessary in this regard.

Request To Revise the Compliance Time for the Inspections

The ATA and the same member airline state that the proposed AD must include provisions for airplanes that have exceeded the limits specified in Report SE–623, ''Airworthiness Limitation Items and Safe Life Items,'' of Appendix 1 of the Fokker 70/100 Maintenance Review Board Document. The provisions should be such that the tests can be accomplished during a normally scheduled out-of-service maintenance.

The FAA does not concur that a grace period needs to be included in the proposed AD for compliance with the Fokker report. Although we agree that some airplanes may have exceeded certain inspection thresholds in the report, the 30-day compliance time for revising the ALS of the Instructions for Continued Airworthiness allows operators sufficient time to accomplish the revision to the ALS. However, if scheduling conflicts occur and adjustments must be made for airplanes that exceed certain thresholds, operators may request an alternative method of compliance, as specified in paragraph (c) of this AD. 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.

Cost Impact

The FAA estimates that 131 Model F.28 Mark 0070 and 0100 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $7,860, 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:

2001–21–04 Fokker Services B.V.: Amendment 39–12475. Docket 98–NM–122–AD.

Applicability: All Model F.28 Mark 0070 and 0100 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 (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 continued structural integrity of these airplanes, accomplish the following:

Airworthiness Limitations Revision

(a) Within 30 days after the effective date of this AD, revise the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness by incorporating Report SE–623, ''Fokker 70/100 Airworthiness Limitation Items and Safe Life Items,'' of Appendix 1 of Fokker 70/100 Maintenance Review Board Document, both dated June 1, 2000.

(b) Except as provided in paragraph (c) of this AD: After the actions specified in paragraph (a) of this AD have been accomplished, no alternative inspections or inspection intervals may be approved for the structural elements specified in the document listed in paragraph (a) of this AD.

Alternative Methods of Compliance

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

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

Special Flight Permits

(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 ALS revision shall be done in accordance with Fokker Services B.V. Report SE–623, ''Fokker 70/100 Airworthiness Limitation Items and Safe Life Items,'' dated June 1, 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 Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Dutch airworthiness directive BLA No. 1997–065 (A), dated July 31, 1997.

Effective Date

(f) This amendment becomes effective on December 4, 2001.

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

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–27067 Filed 10–29–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–68–AD; Amendment 39–12488; AD 2001–22–09]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B19 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Bombardier Model CL–600–2B19 series airplanes, that requires repetitive eddy current inspections for cracking of the main landing gear (MLG) main fittings, and replacement with a new or serviceable MLG, if necessary. This action also requires servicing the MLG shock struts; inspecting the MLG shock struts for nitrogen pressure, visible chrome dimension, and oil leakage; and performing corrective actions, if necessary. The actions specified by this AD are intended to prevent failure of the MLG main fitting, which could result in collapse of the MLG upon landing. This action is intended to address the identified unsafe condition.

DATES: Effective December 4, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 4, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centreville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 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: Serge Napoleon, Aerospace Engineer, ANE–171, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7512; 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 CL–600–2B19 series airplanes was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on March 23, 2001 (66 FR 16156). That action proposed to require repetitive eddy current inspections for cracking of the main landing gear (MLG) main fittings, and replacement with a new or serviceable MLG, if necessary. That action also proposed to require servicing the MLG shock struts; inspecting the MLG shock struts for nitrogen pressure, visible chrome dimension, and oil leakage; and performing corrective actions, if necessary.

Public Comment

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

Request To Revise the Applicability

One commenter points out that the inspection specified in paragraph (a) of the NPRM requires compliance with Part ''B'' of Bombardier Alert Service Bulletin A601R–32–079, dated December 1, 2000; however, Appendix 1 of that alert service bulletin states that the inspection is necessary only for MLG main fittings having part numbers (P/Ns) 17064–101, 17064–102, 17064–103, and 17064–104, not to all airplanes having serial numbers 7003 and subsequent. The commenter explains that airplanes currently being delivered have MLG main fittings having P/Ns 17064–105 and 17064–106. The FAA infers that the commenter is requesting that we revise the applicability of the final rule.

The FAA agrees with the commenter. We have verified with Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, that airplanes having MLG main fittings having P/Ns 17064–105 and 17064–106 are not subject to the requirements of this final rule. Therefore, we have revised the applicability of the final rule to clarify that the final rule applies to Bombardier Model CL–600–2B19 series airplanes, certificated in any category, having serial number 7003 and subsequent, and equipped with a MLG main fitting having P/N 17064–101, 17064–102, 17064–103, or 17064–104.

Requests To Withdraw the NPRM

1. One commenter requests that the NPRM be withdrawn. The commenter states that, since the reason for the NPRM was one event of a misserviced strut by a foreign air carrier, it is not necessary to issue an AD. In addition,

the commenter suggests that requiring repetitive strut servicing could be done by mandating that the strut inspection be added to the operators' inspection programs. The commenter contends that incorporating such inspection requirements into the inspection program is preferred by operators.

2. Another commenter states that it has conducted 1,496 eddy current inspections in accordance with the alert service bulletin referenced in the NPRM and has found no discrepancies. This same commenter also states that it has been servicing the shock struts beyond the requirements specified in paragraph (b) of the NPRM by performing a complete reservicing of the shock strut with oil and nitrogen every 12 months. The FAA infers that the commenter is requesting that the NPRM be withdrawn.

3. Another commenter suggests that an annual complete reservicing of the MLG shock strut performed in conjunction with an annual eddy current inspection is an equivalent or better level of safety than the actions proposed in the NPRM. The commenter notes that the brake lines are clamped to the MLG main fittings and must be moved or removed to gain access to the inspection area. Therefore, the commenter asserts that its proposed actions would have the benefit of reducing the adverse affects on reliability and safety impact caused by frequent disturbance of the brake lines.

The FAA does not concur that the NPRM should be withdrawn for the following reasons:

1. TCCA, has advised us that three cases of premature failures of the MLG have been reported. Because implementation and quality of various existing maintenance programs may differ, we have determined that by issuing an AD to require eddy current inspections for cracks and replacement, if necessary, with a new or serviceable fitting, (and, as required by paragraph (b) of this AD, servicing and inspecting the MLG shock struts to determine the nitrogen pressure, visible chrome dimension and any oil leakage), the identified unsafe condition will be addressed appropriately.

2. In requiring the actions specified in this final rule, the FAA has not precluded an operator's prerogative to perform additional actions to further increase the safety level that an operator may wish to take. As stated previously, we acknowledge that some operators' maintenance programs may be of a higher quality than others. However, our obligation remains to issue an AD to address the identified unsafe condition; and the rule must apply to everyone to ensure that all affected airplanes are covered, regardless of who operates them. However, under the provisions of paragraph (g) of the final rule, we may approve requests for an alternate method of compliance if data are submitted to substantiate that such a method would provide an acceptable level of safety.

3. The FAA does not agree that an annual complete reservicing of the MLG shock strut performed in conjunction with an annual eddy current inspection is equivalent to or a better level of safety than the actions required by this final rule. Since the airplane model accumulates an average of approximately 2,500 flight cycles per year, that would require the eddy current inspection only every 2,500 flight cycles. However, according to the investigation that was conducted by the original equipment manufacturer (OEM), it took only 2,000 flight cycles for the cracking to develop from initiation to critical size. Therefore, we have determined that it is necessary to require inspections at intervals not to exceed 500 flight cycles.

As to the adverse affects on the reliability and safety impact caused by frequent disturbance of the brake lines, we point out that the inspection and its repetitive interval are not only consistent with the OEM service bulletin, but also include specific procedures for handling the brake lines with minimal disturbance. No change is necessary to the final rule regarding these requests.

Requests To Remove Certain Paragraphs of the NPRM

Two commenters state that the requirements of paragraphs (c) and (d) of the NPRM are unnecessary. One commenter states that paragraphs (c) and (d) of the NPRM, which require ''inspection of shock strut servicing,'' per Bombardier Alert Service Bulletin A601R–32–079, are already incorporated into the Maintenance Review Board (MRB) document, Task 32–00–00–09 (100 flight hours/routine check) and Task 32–00–00–11 (400 flight hours/A check). The FAA infers that the commenters are requesting that paragraphs (c) and (d) of the NPRM be removed.

The FAA does not agree. Although the inspection and servicing of the shock struts required by paragraphs (c) and (d) of the final rule may be the same as the MRB document, our obligation remains to issue an AD to address the identified unsafe condition. However, under the provisions of paragraph (g) of the final rule, we may approve requests for an alternate method of compliance if data are submitted to substantiate that such a method would provide an acceptable level of safety.

One of those commenters also notes that paragraph (e) of the NPRM ''requires extension of repetitive inspection.'' The commenter states that, based on the results of 1,496 negative eddy current inspections, and the fact that the inspections are incorporated into the MRB document, paragraph (e) of the NPRM is not necessary.

The FAA does not concur that paragraph (e) of the NPRM is unnecessary. We point out that in paragraph (e) of this final rule, the extension of the inspection interval from every 500 flight cycles to every 1,000 flight cycles is not ''required,'' but ''may'' be extended if the conditions specified in paragraph (e) of the final rule are met. In accordance with the provisions of that paragraph, if an operator does not wish to extend the repetitive inspection interval, there is no requirement to do so.

Requests To Revise the Requirements of Paragraph (a) of the NPRM

One commenter requests that paragraph (a) of the NPRM be revised to add the visual inspection that is specified in the alert service bulletin, which is referenced as the source of service information in the NPRM. The commenter notes that the alert service bulletin only specifies an eddy current inspection if cracking is detected during the visual inspection. This same commenter also requests that paragraph (a) of the NPRM be revised to reflect a compliance threshold of 1,000 hours with escalation to a ''C'' check (currently 4,000 flight hours for that operator's operations).

The FAA does not agree with either of the commenter's requests. The three instances of premature failures of the MLG main fittings indicates that the crack propagation is rapid in high-strength steel material. In fact, investigation into those three failure cases revealed that the crack growth from initiation to critical crack size was about 2,000 flight cycles. Since eddy current inspections are more reliable in detecting such rapid crack growth, we find that the repetitive inspection interval of 500 flight cycles required by paragraph (a) of the final rule to be appropriate.

Requests To Extend the Repetitive Inspection Intervals

Two commenters request that the repetitive inspection interval of 500 flight cycles specified in paragraph (a) of the NPRM be extended. One commenter asks that the repetitive

inspection interval be revised to require the inspection every ''C'' check. This commenter justifies an extension of the repetitive inspections based on the fact that it has already accomplished three consecutive inspections (500 flight cycles) per the Bombardier alert service bulletin specified in the NPRM, and has found no defects. The commenter states that the current maintenance program effectively prevents improper servicing. The other commenter requests that the repetitive inspection interval be extended to every ''C'' check after a reasonable number of non-destructive testing (NDT) inspections (perhaps two) are done at the 1,000 flight cycle interval. Both commenters state that, since they are aware of only one cracking occurrence, there is no proof that there is an inherent flaw in the MLG main fitting.

The FAA does not concur that the repetitive inspection interval may be extended. We stated previously that TCCA has advised us that three cases of premature failures of the MLG have been reported. In addition, we also stated previously that the repetitive inspection interval was based on the findings of the investigation into the rapid crack growth that occurred on the MLG main fittings. No change to the final rule in this regard is necessary. However, under the provisions of paragraph (g) of the final rule, we may approve requests for adjustments to the compliance time if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety.

Interim Action

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

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change 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

There are approximately 339 Bombardier Model CL–600–2B19 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 236 airplanes of U.S. registry will be affected by this proposed AD, that it will take approximately 3 work hours per airplane to accomplish an eddy current inspection, and the servicing actions, and inspections specified in paragraphs (a), (b), and (c) of this AD. We estimate that the average labor rate is $60 per work hour. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be $42,480, or $180 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:

2001–22–09 Bombardier, Inc. (Formerly Canadair): Amendment 39–12488. Docket 2000–NM–68–AD.

Applicability: Model CL–200–2B19 series airplanes, certificated in any category, having serial numbers 7003 and subsequent, and equipped with a main landing gear (MLG) main fitting having part number (P/N) 17064–101, 17064–102, 17064–103, or 17064–104.

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 (g) 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 MLG main fitting, which could result in collapse of the MLG upon landing, accomplish the following:

Inspection and Replacement

(a) Prior to the accumulation of 1,500 total flight cycles, or within 150 flight cycles after the effective date of this AD, whichever occurs later: Perform an eddy current inspection to detect cracking of the MLG main fittings, in accordance with Part B of the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–32–079, Revision D, dated December 1, 2000. If any cracking is found, prior to further flight, replace the cracked fitting with a new or serviceable fitting in accordance with the alert service bulletin. Repeat the inspection thereafter at intervals not to exceed 500 flight cycles.

Servicing the Shock Struts

(b) Prior to the accumulation of 1,500 total flight cycles since the date of manufacture, or within 500 flight cycles after the effective date of this AD, whichever occurs later: Perform a servicing (Oil and Nitrogen) of the MLG shock struts (left and right main landing shock struts), in accordance with Part C (for airplanes on the ground) or Part D (for airplanes on jacks) of the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–32–079, Revision D, dated December 1, 2000.

Other Inspections

(c) Within 500 flight cycles after completing the actions required by paragraph (b) of this AD: Perform an inspection of the MLG left and right shock struts for nitrogen pressure, visible chrome dimension, and oil leakage, in accordance with Part E of the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–32–079, Revision D, dated December 1, 2000. Thereafter, repeat the inspection at intervals not to exceed 500 flight cycles.

Corrective Actions for Certain Inspections

(d) If the chrome extension dimension of the shock strut pressure reading is outside the limits specified in the Airplane Maintenance Manual, Task 32–11–05–220–801, or any oil leakage is found: Prior to further flight, service the MLG shock strut in accordance with Part C (for airplanes on the ground) or Part D (for airplanes on jacks) of the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–32–079, Revision D, dated December 1, 2000.

Extension of the Repetitive Interval

(e) After the effective date of this AD: After a total of five consecutive inspections of the MLG shock struts that verify that the shock struts are serviced properly, and a total of five consecutive eddy current inspections of the MLG main fitting has been accomplished that verify there is no cracking of the main fitting, in accordance with Bombardier Alert Service Bulletin A601R–32–079, Revision D, dated December 1, 2000, the repetitive interval for the eddy current inspections required by paragraph (a) of this AD may be extended from every 500 flight cycles to every 1,000 flight cycles.

Reporting Requirement

(f) Within 30 days after each inspection and servicing required by paragraphs (a), (b), and (c) of this AD, report all findings, positive or negative, to: Bombardier Aerospace, Regional Aircraft, CRJ Action Desk, fax number 514–855–8501. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

Alternative Methods of Compliance

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

(h) 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

(i) The actions shall be done in accordance with Bombardier Alert Service Bulletin A601R–32–079, Revision D, dated December 1, 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., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 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.

Note 3: The subject of this AD is addressed in Canadian airworthiness directive CF–1999–32R1, dated January 22, 2001.

Effective Date

(j) This amendment becomes effective on December 4, 2001.

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

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–27068 Filed 10–29–01; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–208–AD; Amendment 39–12487; AD 2001–22–08]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F.28 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Fokker Model F.28 series airplanes, that requires replacing the main landing gear (MLG) torque link dampers with modified and reidentified dampers. This action is necessary to prevent degradation of the dampers, which could result in MLG high amplitude oscillation in a lateral torsional mode, and consequent MLG damage or separation of the MLG from the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective December 4, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 4, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, 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: 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 Fokker Model F.28 series airplanes was published in the **Federal Register** on August 17, 2001 (66 FR 43124). That action proposed to require replacing the main landing gear (MLG) torque link dampers with modified and reidentified dampers.

Comments

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

Allow Use of New-Configuration Dampers

The commenter requests that the FAA revise paragraph (a) of the proposed rule to allow an operator to install a torque link damper with a dash number higher than (23700)–5. The commenter states that it has already modified its entire inventory of torque link dampers to the configuration of part number 23700–7. The commenter states that revising the proposed AD to allow installation of parts modified to a configuration subsequent to that of part number 23700–5 would relieve it and other operators of the need to request approval of alternative methods of compliance (AMOCs).

The FAA partially concurs with the commenter's request. Because we cannot approve installation of dampers that do not exist, we do not concur to revise paragraph (a) of the proposed AD in the specific way the commenter suggests.

However, since the issuance of the proposed rule, we have reviewed Fokker

Service Bulletins SBF28/32–159, dated October 1, 1999 (for Models F.28 Mark 1000 through 4000 series airplanes), and SBF100–32–116, dated February 1, 2000 (for Model F.28 Mark 0070/0100 series airplanes). Those service bulletins specify replacement of existing torque link dampers with modified dampers, and refer to Menasco Aerospace Service Bulletin 23700–32–15, dated September 3, 1999, as an appropriate source of service information for modifying torque link dampers with part number 23700–1, –3, or –5, to part number 23700–7. In consideration of these service bulletins, we have added a new Note 2 to this final rule to state that installation of torque link dampers with part number 23700–7 in accordance with Fokker Service Bulletin SBF28/32–159 or SBF100–32–116, as applicable, is acceptable for compliance with paragraph (a) of this AD.

Operators should note that, for installation of dampers with part numbers other than 23700–5 or –7, they must submit a request for approval of an AMOC in accordance with paragraph (c) 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 as proposed.

Cost Impact

The FAA estimates that 147 Model F.28 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 6 work hours per airplane to accomplish the required replacement, and that the average labor rate is $60 per work hour. Required parts will cost approximately $1,910 per airplane. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be $333,690, or $2,270 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:

2001–22–08 Fokker Services B.V.: Amendment 39–12487. Docket 2001–NM–208–AD.

Applicability: All Model F.28 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 (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 separation of the main landing gear (MLG) from the airplane due to performance degradation of the torque link damper, accomplish the following:

Modification and Reidentification

(a) Replace MLG torque link dampers having part numbers (P/N) 23700–1 or –3 with dampers having P/N 23700–5, in accordance with the Accomplishment Instructions of Fokker Service Bulletin (SB) SBF28/32–157 (for Models F.28 Mark 1000 through 4000 series airplanes) or Fokker Service Bulletin SBF100–32–114 (for Model F.28 Mark 0070/0100 series airplanes), both dated October 1, 1999, as applicable; at the times specified in the following table:

TABLE 1.—COMPLIANCE TIMES

Fokker F.28 model (mark) designation	MLG manufactured by	MLG mod. status	Compliance required after the effective date of this AD
(1) Mk.0100	Dowty Aerospace; MD	Pre-Mod SB F100–32–50	Within 15 months.
(2) Mk.0100	Dowty Aerospace; MD	Post-Mod SB F100–32–50	Within 21 months.
(3) Mk.0100	Menasco Aerospace	[Reserved]	Within 24 months.
(4) Mk.0070	Menasco Aerospace	[Reserved]	Within 24 months.
(5) Mk.1000 through Mk.4000 series	Dowty Aerospace; MD	[Reserved]	Within 24 months.

Note 2: Installation of torque link dampers with P/N 23700–7 in accordance with Fokker Service Bulletin SBF28/32–159, dated October 1, 1999 (for Models F.28 Mark 1000 through 4000 series airplanes), or SBF100–32–116, dated February 1, 2000 (for Model

F.28 Mark 0070/0100 series airplanes), as applicable, is acceptable for compliance with paragraph (a) of this AD.

Spares

(b) As of the effective date of this AD, no person shall install torque link damper having P/N 23700–1 or –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.

Incorporation by Reference

(e) The actions shall be done in accordance with Fokker Service Bulletin SBF28/32–157, dated October 1, 1999; or Fokker Service Bulletin SBF100–32–114, dated October 1, 1999; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands. 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 Dutch airworthiness directive 1999–138, dated October 29, 1999.

Effective Date

(f) This amendment becomes effective on December 4, 2001.

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

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–27069 Filed 10–29–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

28 CFR PART 16

[AAG/A Order No. 246–2001]

Privacy Act of 1974; Implementation

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice currently exempts the following system of records from subsection (d) of the Privacy Act, pursuant to 5 U.S.C. 552a(j)(2): Controlled Substances Act Nonpublic Records (JUSTICE/JMD–002). This final rule makes changes to reflect the current statutory authority, as well as the primary reason for exempting the system.

EFFECTIVE DATE: This final rule is effective October 30, 2001.

FOR FURTHER INFORMATION CONTACT: Mary Cahill at 202–307–1823.

SUPPLEMENTARY INFORMATION: On July 20, 2001 (66 FR 37939), a proposed rule was published in the **Federal Register** with an invitation to comment. No comments were received.

This order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, this order will not have a significant economic impact on a substantial number of small entities.

List of Subjects in Part 16

Administrative Practices and Procedures, Courts, Freedom of Information Act, Privacy Act, and Government in Sunshine Act.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793–78, 28 CFR part 16 is amended as follows:

PART 16—AMENDED

1. The authority for part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g), 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717, 9701.

2. It is proposed to amend 28 CFR 16.76 by revising paragraph (b)(1) as follows:

§ 16.76 Exemption of Justice Management Division.

* * * * *

(b) Exemption from subsection (d) is justified for the following reasons:

(1) Access to and use of the nonpublic records maintained in this system are restricted by law. Section 3607(b) of Title 18 U.S.C. (enacted as part of the Sentencing Reform Act of 1984, Pub. L. 98–473, Chapter II) provides that the sole purpose of these records shall be for use by the courts in determining whether a person found guilty of violating section 404 of the Controlled Substances Act qualifies:

(i) for the disposition available under 18 U.S.C. 3607(a) to persons with no prior conviction under a Federal or State law relating to controlled substances, or

(ii) for an order, under 18 U.S.C. 3607(c), expunging all official records (except the nonpublic records to be retained by the Department of Justice) of the arrest and any subsequent criminal proceedings relating to the offense.

* * * * *

Dated: October 17, 2001.

Janis A. Sposato,

Acting Assistant Attorney General for Administration.

[FR Doc. 01–27202 Filed 10–29–01; 8:45 am]

BILLING CODE 4410–FB–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP San Francisco Bay 01–009]

RIN 2115–AA97

Security Zones; San Francisco Bay, San Francisco, CA and Oakland, CA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule; request for comments.

SUMMARY: The Coast Guard is establishing two temporary security zones in areas of the San Francisco Bay adjacent to San Francisco International Airport and Oakland International Airport. These actions are necessary to ensure public safety and prevent sabotage or terrorist acts at these airports. Persons and vessels are prohibited from entering into or remaining in these security zones without permission of the Captain of the Port, or his designated representative.

DATES: This rule is effective from 5 p.m. (PDT) on September 21, 2001 to 4:59 p.m. (PDT) on March 21, 2002. Comments and related material must reach the Coast Guard on or before December 31, 2001.

ADDRESSES: Send comments to: U.S. Coast Guard Marine Safety Office, San Francisco Bay, Coast Guard Island, Alameda, CA 94501. Any comments and material received from the public, as

well as documents indicated in this preamble as being available in the docket, will become part of docket COTP San Francisco Bay 01–009, and will be available for inspection or copying at the same address between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Andrew B. Cheney, U.S. Coast Guard Marine Safety Office San Francisco Bay, at (510) 437–3073.

SUPPLEMENTARY INFORMATION:

Regulatory Information

As authorized by 5 U.S.C. 553, we did not publish a notice of proposed rulemaking (NPRM) for this regulation. In keeping with the requirements of 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM, and that under 5 U.S.C. 553 (d)(3), good cause exists for making this regulation effective less than 30 days after publication in the **Federal Register**.

On September 11, 2001, two commercial aircraft were hijacked from Logan Airport in Boston, Massachusetts and flown into the World Trade Center in New York, New York inflicting catastrophic human casualties and property damage. On the same day, a similar attack was conducted on the Pentagon in Arlington, Virginia. Also, on the same date, a fourth commercial passenger airplane was hijacked, this one from Newark, New Jersey, and later crashed in Pennsylvania. National security officials warn that future terrorist attacks against civilian targets may be anticipated. A heightened level of security has been established concerning all vessels transiting in the San Francisco Bay, and particularly in waters adjacent to San Francisco International Airport and Oakland International Airport. These security zones are needed to protect the United States and more specifically the people, ports, waterways, and properties of the San Francisco Bay area.

The delay inherent in the NPRM process, and any delay in the effective date of this rule, is contrary to the public interest insofar as it may render individuals and facilities within and adjacent to the San Francisco and Oakland airports vulnerable to subversive activity, sabotage or terrorist attack. The measures contemplated by this rule are intended to prevent future terrorist attacks against individuals and facilities within or adjacent to these west coast airports. Immediate action is required to accomplish these objectives. Any delay in the effective date of this rule is impracticable and contrary to the public interest.

Request for Comments

Although the Coast Guard has good cause in implementing this regulation, we want to afford the maritime community the opportunity to participate in this rulemaking by submitting comments and related material regarding the size and boundaries of these security zones in order to minimize unnecessary burdens. If you do so, please include your name and address, identify the docket number for this rulemaking, COTP San Francisco Bay 01–009, indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8 1/2 by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this temporary final rule in view of them.

Public Meeting

We do not plan to hold a public meeting. However, you may submit a request for a meeting by writing to the person identified in the **FOR FURTHER INFORMATION CONTACT** section, or to the address under **ADDRESSES** explaining why a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

On September 11, 2001, terrorists launched attacks on civilian and military targets within the United States killing large numbers of people and damaging properties of national significance. Vessels operating near the airports adjacent to the San Francisco Bay present possible platforms from which individuals may gain unauthorized access to the airports. As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399), Congress amended the Ports and Waterways Safety Act (PWSA) to allow the Coast Guard to take actions, including the establishment of security and safety zones, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures. 33 U.S.C. 1226. The terrorist acts against the United States on September 11, 2001 have increased the need for safety and security measures on U.S. ports and waterways. In response to these terrorist acts, and in order to prevent similar occurrences, the Coast Guard is establishing two temporary security zones in the navigable waters of the United States surrounding San Francisco International Airport and Oakland International Airport.

San Francisco International Airport

This security zone will extend 2000 yards seaward from the shoreline of the San Francisco International Airport. This distance from the shoreline is estimated to be an adequate zone size to provide increased security for San Francisco International Airport.

Oakland International Airport

This security zone will extend 1800 yards seaward from the shoreline of the Oakland International Airport. This distance from the shoreline is estimated to be an adequate zone size to provide increased security for Oakland International Airport.

The size of each security zone is tailored to each airport and their specific navigational limitations, and therefore, are not the same exact size. The two security zones are uniform, however, in their purpose—to provide increased security for the airports, while minimizing the impact to vessel traffic on the San Francisco Bay.

These temporary security zones are necessary to provide for the safety and security of the United States of America and the people, ports, waterways and properties within the San Francisco Bay area. These security zones will be enforced by Coast Guard patrol craft or any patrol craft enlisted by the COTP. Persons and vessels are prohibited from entering into or remaining in these security zones without permission of the Captain of the Port, or his designated representative. Each person and vessel in a security zone shall obey any direction or order of the COTP. The COTP may remove any person, vessel, article, or thing from a security zone. No person may board, or take or place any article or thing on board, any vessel in a security zone without the permission of the COTP.

Pursuant to 33 U.S.C. 1232, any violation of the security zone described herein, is punishable by civil penalties (not to exceed $27,500 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment for not more than 6 years and a fine of not more than $250,000), in rem liability against the offending vessel, and license sanctions. Any person who violates this regulation, using a dangerous weapon, or who engages in conduct that causes

bodily injury or fear of imminent bodily injury to any officer authorized to enforce this regulation, also faces imprisonment up to 12 years (class C felony).

Regulatory Evaluation

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

Due to the recent terrorist actions against the United States the implementation of these security zones are necessary for the protection of the United States and its people. Because these security zones are established in an area of the San Francisco Bay that is seldom used, the Coast Guard expects the economic impact of this rule to be so minimal that full regulatory evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

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

These security zones will not have a significant impact on a substantial number of small entities because these security zones will not occupy an area of the San Francisco Bay that is frequently transited. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this temporary final rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), the Coast Guard offers to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please contact Lieutenant Andrew B. Cheney, U.S. Coast Guard Marine Office San Francisco Bay at (510) 437–3073.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation, because we are establishing security zones. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add new § 165.T11–095 to read as follows:

§ 165.T11–095 Security Zones; Waters surrounding San Francisco International Airport and Oakland International Airport, San Francisco Bay, California.

(a) *Locations.* (1) *San Francisco International Airport Security Zone.* This security zone extends 2000 yards seaward from the shoreline of the San Francisco International Airport and encompasses all waters in San Francisco Bay within an area drawn from the following coordinates beginning at a point latitude 37°39′06″ N and longitude 122°22′37″ W; thence to 37°38′28″ N and 122°21′04″ W; thence to 37°36′59″ N and 122°19′52″ W; thence to 37°35′33″ N and 122°20′44″ W; and along the shoreline back to the beginning point.

(2) *Oakland International Airport Security Zone.* This security zone extends 1800 yards seaward from the shoreline of the Oakland International Airport and encompasses all waters in San Francisco Bay within an area drawn from the following coordinates beginning at a point latitude 37°44′21″ N and longitude 122°15′34″ W; thence to 37°43′51″ N and 122°16′09″ W; thence to 37°43′12″ N and 122°16′17″ W; thence to 37°41′00″ N and 122°13′29″ W; thence to 37°41′13″ N and 122°12′09″ W; thence to 37°41′37″ N and 122°11′38″ W; and along the shoreline back to the beginning point.

(b) *Effective dates.* This section is in effect from 5 p.m. (PDT) on September 21, 2001 to 4:59 p.m. (PDT) on March 21, 2002. If the need for these security zones ends before the scheduled termination time, the Captain of the Port will cease enforcement of these security zones and will also announce that fact via Broadcast Notice to Mariners.

(c) *Regulations.* In accordance with the general regulations in § 165.33 of this part, no person or vessel may enter or remain in the security zone established by this temporary section, unless authorized by the Captain of the Port, or his designated representative. All other general regulations of § 165.33 of this part apply in the security zone established by this temporary section.

Dated: September 21, 2001.

L.L. Hereth,

Captain, U.S. Coast Guard, Captain of the Port, San Francisco Bay, California.

[FR Doc. 01–27255 Filed 10–29–01; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD 072–3086; FRL–7088–9]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; One-Hour Ozone Attainment Demonstration for the Baltimore Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving the State Implementation Plan (SIP) consisting of the attainment demonstration for the one-hour ozone national ambient air quality standard (NAAQS) for the Baltimore severe nonattainment area (the Baltimore area). 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 Baltimore area. The intended effect of this action is to approve these SIP revisions as meeting the requirements of the Clean Air Act (CAA or the Act).

DATES: This final rule is effective on November 29, 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 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:

A. What Action Is EPA Taking In This Final Rulemaking?
B. What Previous Action Has Been Proposed on These SIP Revisions?
C. What Were the Conditions for Approval Provided in the Notice of Proposed Rulemakings for the Attainment Demonstration?
D. What Amendments to the Attainment Demonstration SIP Did Maryland Submit for the Baltimore Area Since December 16, 1999?
E. What Did the Supplemental Notices of Proposed Rulemaking Cover?
F. When Did EPA Make a Determination Regarding the Adequacy of the Motor Vehicle Emissions Budgets for the Baltimore Area?
G. What SIP Elements Did EPA Take Final Action on Concurrently or Before the Full Approval of the Attainment Demonstration Could Be Granted?
H. What Measures Are in the Control Strategy for the Attainment Demonstration?
I. What Are the Approved Transportation Conformity Budgets, and What Effect Does This Action Have on Transportation Planning?
J. What Happens to the Approved 2005 Budgets When States Change Their Budgets Using the MOBILE6 Model?
K. What is the Status of Maryland's New Source Review Program?
L. What Comments Were Received on the Proposed Approvals and How Has EPA Responded to Those?

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 Baltimore 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 SIP SUBMITTAL DATES

	Date	Summary of content
Initial Submittal	April 29, 1998	Attainment Demonstration.
Amendment	August 18, 1998	Attainment Demonstration Revision to Include Supplemental Regional Scale Modeling.
Amendment	December 21, 1999	Attainment Demonstration Revision to Include Revised Motor Vehicle Emission Budgets.

TABLE 1.—SUMMARY OF ATTAINMENT DEMONSTRATION SIP SUBMITTAL DATES—Continued

	Date	Summary of content
Amendment	December 28, 2000	Attainment Demonstration Revision to Include Revised Motor Vehicle Emission Budgets to Reflect Tier 2 and Commitments.
Amendment	August 20, 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 Baltimore area (64 FR 70397).

On February 22, 2000 (65 FR 8703), EPA published a notice of availability on guidance memoranda relating to ten one-hour ozone attainment demonstrations (including the Baltimore 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 the attainment demonstration SIP revisions. This supplemental notice is discussed in Section I.E.

On July 16, 2001, EPA published a SNPR on the attainment demonstration (66 FR 36964). In that supplemental notice, we proposed to approve a revision that contains revised motor vehicle emissions budgets for the attainment year of 2005 which incorporate and reflect the benefits of the Federal Tier 2/Low Sulfur 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 the 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. We received no comments on that SNPR.

On September 7, 2001, EPA published a SNPR on the attainment demonstration (66 FR 44760). In that supplemental notice, we proposed to approve an Maryland's RACM analysis and determination for the Baltimore area. We received no timely comments on that SNPR.

Comments received on the December 16, 1999 and July 28 , 2000 proposed notices listed in this section relevant to the Baltimore area attainment demonstration are discussed in Sections I.L. and II.

C. What Were the Conditions for Approval Provided in the Notice of Proposed Rulemakings for the Attainment Demonstration?

On December 16, 1999 (64 FR 70397), we proposed approval of the attainment demonstration for the Baltimore area. Our approval was contingent upon certain actions by Maryland. These actions were that Maryland:

(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; and

(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 Baltimore Area Since December 16, 1999?

The following is a summary of such submittals which include 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 revisions to the 2005 motor vehicle emission budgets for the attainment plan for the Baltimore Area and for Cecil County, Maryland which is part of the Philadelphia-Wilmington-Trenton ozone nonattainment area.

(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 20, 2001, Maryland submitted the ''State Implementation Plan (SIP) Revision: Reasonably Available Control Measures Analysis for the Baltimore Region.'' This submittal supplements the attainment demonstration for the Baltimore Area 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 latter proposal is not germane to the Baltimore 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.

(c) In addition, we re-opened 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). We received no comments on that SNPR. In that supplemental notice, we proposed to approve:

(a) a revision that contains revised motor vehicle emissions budgets for the attainment year of 2005 which incorporate and reflect the benefits of the Federal Tier 2/Low Sulfur 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.

(3) On September 7, 2001, EPA published a SNPR on the attainment demonstration (66 FR 44760). In that supplemental notice, we proposed to approve Maryland's RACM analysis and determination for the Baltimore area. We received no timely comments on that SNPR.

F. When Did EPA Make a Determination Regarding the Adequacy of the Motor Vehicle Emissions Budgets for the Baltimore Area?

Maryland submitted a revision to the attainment plan SIP for the Baltimore area on December 28, 2000. This revision contained revised motor vehicle emissions budgets for the attainment year of 2005 that reflect 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 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 December 28, 2000 SIP revision for the Baltimore 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. In a July 5, 2001, **Federal Register** notice we announced that we had determined that the budgets contained in the December 28, 2000 submission were adequate (66 FR 35421). The proposed approval of the budgets in the December 28, 2000 submission is discussed in Section I.B., 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).

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 Baltimore attainment demonstration SIP, EPA noted in Table 4 the status of many of the control measures or part D requirements of the Act for serious and severe areas. The following provides the status of those SIP elements which are prerequisite for approval of the attainment demonstration but which were either not fully approved on December 16, 1999 or not listed in Table 4 of the December 16, 1999 NPR as fully approved:

(1) On October 29, 1999, EPA approved Maryland's enhanced vehicle inspection and maintenance SIP (64 FR 58340).

(2) On December 28, 1999, EPA approved Maryland's national low emission vehicle (NLEV) SIP (64 FR 72564).

(3) On February 3, 2000, EPA approved Maryland's, 15 percent VOC Reduction Plan (65 FR 5242).

[1] In the 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 70402). The budgets subject to this May 31, 2000 deadline did not necessarily 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 8701, February 22, 2000).

(4) On December 15, 2000, EPA approved Maryland's NO_X Budget Rule consistent with the Ozone Transport Commission's (OTC) NO_X Memorandum of Understanding (MOU) Phase II controls (65 FR 78416).

(5) On January 10, 2001, EPA approved Maryland's NO_X trading rule consistent with the NO_X SIP Call (66 FR 1866).

(6) On, February 8, 2001, EPA approved Maryland's NO_X RACT rule (66 FR 9522).

(7) On September 26, 2001, EPA approved Maryland's Post-1996 Rate-of-Progress Plans (ROP) for the Baltimore area (66 FR 49108).

To comply with the VOC RACT requirements, Maryland has developed source category rules. Sources of VOC in the Baltimore area that emit more than 25 tons per year (TPY) and that are not subject to any specific source category RACT 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 source category RACT rules which were either not fully approved on December 16, 1999. December 16, 1999 as fully approved:

(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).

(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 signed a final action approving the Maryland's Iron & Steel Operations rule. That action has been or soon will be published in the **Federal Register**.

(7) On October 9, 2001, the Regional Administrator signed a final action approving the Maryland's Aerospace Coating, Kraft Pulp Mills, and Distilled Spirits Facilities rules. 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 BALTIMORE NONATTAINMENT AREA

Control measure	Type of measure	Credited in attainment plan
Enhanced Inspection & Maintenance	SIP Approved	Yes.
Federal Motor Vehicle Control Program	Federal	Tier 1 and 2.
National Low Emission Vehicle (NLEV) [1]	SIP Approved opt-in	Yes.
Reformulated Gasoline (Phase 1 & 2)	Federal	Phase 2.
Federal Non-Road Gasoline Engines	Federal	Yes.
Federal Non-Road Heavy Duty Diesel Engines	Federal	Yes.
Railroad Locomotive Controls	Federal	Yes.
NO_X RACT	SIP Approved	Yes.
VOC RACT to 25 tpy	SIP Approved	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	Federal/SIP Approved	Yes.
Surface Cleaning/Degreasing	SIP Approved	Yes.
Open Burning Ban	SIP Approved	Yes.
Municipal Landfills	SIP Approved	Yes.
Expandable Polystyrene Products	SIP Approved	Yes.
Yeast Manufacturing	SIP Approved	Yes.
Commercial Bakery Ovens	SIP Approved	Yes.
Screen Printing	SIP Approved	Yes.
Marine Engine Standards	Federal	Yes.
Graphic Arts	SIP Approved	Yes.
Heavy Duty Diesel Engines (On-Road)	Federal	Yes.
Beyond RACT NO_X Requirements on Utilities	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 2005 attainment demonstration are adequate. The approved motor vehicle emissions budgets of the 2005 attainment demonstration SIP 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 BALTIMORE AREA

Type of control strategy SIP	Year	VOC (TPD)	NO_X (TPD)	Effective date of adequacy determination
Attainment Demonstration	2005	45.5	96.9	July 20, 2001, (See 66 FR 35421, published July 5, 2001).

EPA has concluded that the 2005 attainment demonstration SIP, including its associated budgets, meets the requirements of the CAA. EPA has also determined that the Baltimore area ozone SIP contains the measures necessary to support these budgets. In this final action, EPA is approving these budgets.

(2) Is the 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 final rulemaking 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 Program?

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, the 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 70397) for Maryland's ozone attainment demonstration for the Baltimore 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.

EPA receive no timely comments on the SNPRs published on July 16, 2001 (66 FR 36964) and on September 7, 2001 (66 FR 44760) for the Baltimore area's 2005 attainment demonstration SIP.

II. Response to Comments

The following discussion summarizes and responds to the comments received on the proposed actions published on December 16, 1999 (64 FR 70397) and July 28, 2000 (65 FR 46383).

A. Attainment Demonstration—Weight of Evidence

Comment 1: 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 1: 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

[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.*

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 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.

Comment 2: Comments were raised asserting that monitored air quality and air quality trends as late as 1999 do not support attainment in the Baltimore area.

Response 2: At the time of the 1999 monitored readings, the Baltimore area had not implemented certain measures that were required to be implemented as part of the attainment demonstration. Moreover, neither the Baltimore area (nor areas upwind of the Baltimore area) have yet implemented the NO_X reductions required under the NO_X SIP Call (63 FR 57356, October 27, 1998). (EPA has, however, approved Maryland's SIP revision which contains regulations to implement the NO_X SIP Call.) Implementation of all these controls may be expected to reduce ozone levels in the Baltimore area resulting in a downward trend in ozone concentrations. Meteorology also was an important factor in the high ozone levels of 1999. In 1999 the entire Northeastern United States was gripped in a severe drought characterized by clear skies and hot temperatures leading to higher than normal ozone concentrations. For these reasons, air quality trends do not constitute a meaningful factor for the WOE analysis for the Baltimore area.

Comment 3: A comment was received that asserts that EPA has chosen to ignore unmistakable calculations that indicated violations of the one-hour standard in the Baltimore area.

Response 3: When reviewing a SIP, EPA must make a reasonable determination that the control measures identified are reasonably likely to attain. Under the WOE determination, EPA has made these determinations based on all of the information presented by the states and available to EPA. This included model results for the majority of the control measures. Though all measures were not 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. The State of Maryland has made a commitment to adopt the additional measures needed for attainment that were identified through the application of EPA's 1999 guidance (See footnote 4). EPA's decision to propose approval of the attainment demonstrations for the Baltimore area was further strengthened by Maryland's commitment to a mid-course review to check progress towards attainment in 2003 along with a commitment to take corrective action if the anticipated progress is not being made.

Comment 4: A comment raised the issue that the Maryland Department of the Environment (MDE) modeled only one episode while the modeling guidance requirement is three episodes. The comment also asserts that the grid resolution of the Ozone Transport Assessment Group (OTAG) modeling would preclude its use in the determination of urban attainment.

Response 4: EPA's 1991 guidance recommends modeling three different episodes representing three predominant meteorological regimes conducive to high ozone. However, due to time constraints and model performance problems, MDE only analyzed one episode with local scale modeling (July 18–20, 1991). The third day of this episode July 20, 1991 is a very severe ozone episode day with a meteorological ozone forming potential ranking of 10 (Cox and Chu 1996). The Cox and Chu analysis ranked all summer days over the past 50 years according to the severity of each day's meteorological ozone forming potential. The most severe day would receive a ranking of one. Given the severity of the July 1991 episode, it is likely to be the controlling episode in the Baltimore area in the determination of reductions needed for attainment. This episode represents one of the most frequently occurring weather patterns conducive to elevated levels of ambient ozone in the Baltimore area as described in the Maryland Department of the Environment document entitled, ''Phase II Attainment Plan for the Baltimore Region and Cecil County.''

EPA shared the concerns expressed in the comment in regard to the limitations of analyses for a single episode and its associated set of meteorological conditions. Therefore, to supplement the review, EPA considered other analyses. For consideration of other meteorological conditions EPA relied on the modeling described in the Supplemental Notice of Proposed Rulemaking for the NO_X SIP Call. Three NO_X SIP call episodes (1991, 1993, 1995) were analyzed using methodologies very similar to the methodologies outlined in EPA's 1999 guidance (See footnote 7). EPA was able to determine that the NO_X SIP call results supported the MDE analyses and that controls identified in the SIP would make progress towards attainment, and with the ''additional measures'' identified by EPA, would provide for attainment. In regard to the geographic resolution of the NO_X SIP call modeling, EPA performed a review of the sensitivity of the estimates of future design values to reduction factors derived from 12km grid cells versus 4 km grid cells and was able to show that very little model accuracy is lost when grid size is increased from 5 kilometers (MDE grid resolution) to 12 kilometers (NO_X SIP call grid resolution).

Comment 5: A commenter takes issue with EPA's conclusion that the model over-predicted by 22 percent, yet the Modeling Technical Support Document for Baltimore's Attainment SIP

concluded that UAM–IV's validation performance with respect to the July 18–20 episode was within EPA recommended tolerances.

Response 5: Model performance within EPA recommended tolerances is used as a screening analysis to determine if the model is performing acceptably. If performance is unacceptable, EPA recommends selection of another episode. In this case the performance was acceptable and the results of the modeling analyses were used. However, EPA model performance criteria are such that systematic model over-prediction in peak concentrations is possible despite overall compliance with EPA model performance criteria. In EPA's view, consideration of the over-prediction is one way to assess modeling uncertainty. To further address uncertainty, EPA applied the 1999 guidance to estimate the Baltimore area future ozone design value using the same technique that was applied to all of the other attainment demonstrations received. Both the assessment of over-prediction and the estimated future design value were used in the WOE determination.

Comment 6: A commenter asserts that model over-prediction in the base case does not necessarily translate to the same model over-prediction in the future case.

Response 6: It is very probable that if the model over predicts peak ozone concentrations in the base case it will over predict peak ozone concentrations in the future or attainment year. EPA agrees that there is no scientific method for evaluating model performance in the future. However, EPA can review the possible implications of model over prediction. EPA's assessment of the impact that the over-prediction may have on future predictions was an attempt to determine if model over-prediction was not a factor would the model predict attainment. In this case, when the magnitude of possible over-prediction is considered, the modeling results indicate attainment is likely, which, therefore, supports EPA's decision to approve the SIP.

Comment 7: A comment was received that asserts it is extremely inappropriate for EPA to adjust the model results downward by 22 percent so that the peak ozone concentration in 2005 is 129 ppb rather than 147 ppb as the model predicted in the Baltimore area modeling.

Response 7: EPA believes that it is appropriate to make the adjustment in the model results as an additional WOE argument in support of attainment for the following reasons. EPA guidance recommends assessment of model performance (both over- and under-prediction) as one of the factors affecting the model results. In general performance measures that fall within EPA recommended ranges are considered as an indication that the model is performing acceptably. For the Baltimore area, EPA more closely reviewed and used this review as part of the WOE. The technique is described in Technical Support Document for the One-Hour Ozone Attainment Demonstration submitted by the State of Maryland for the Baltimore Ozone Nonattainment Area.(see footnote 5). The modeled peak ozone results (the ozone plume) generally correlated (in geographic proximity) with the monitored peak ozone except that the peak modeled ozone levels averaged approximately 22% higher than the peak monitored levels. This led EPA to conclude that adjusting the model predicted peak concentration by 22% was a reasonable approach for accounting for model uncertainty/over-prediction. If the peak modeled and monitored ozone plumes had not occurred in the same location, EPA would not have had adequate information to reasonably judge that the model is actually over-predicting peak ozone concentration. Even if the modeled peak ozone concentration for the July 1991 episode is not adjusted for model over-prediction, the peak concentration of 147 ppb is only 7 ppb greater than the concentration that would be allowed (140 ppb) on a day with an ozone forming potential as severe as that of July 20, 1991 (Cox and Chu, 1996). Therefore, given the control measures modeled, coupled with the ''additional measures'' identified by EPA, and given the Court's support for the NO_X SIP call, EPA feels Baltimore will attain the standard, as expeditiously as practicable.

Comment 8: A comment asserts that the Baltimore area local attainment modeling predicts ozone concentrations so far in excess of the ozone NAAQS that a weight of evidence analysis should not even be considered in the demonstration of attainment.

Response 8: As discussed in the technical support document that EPA prepared in support of its proposed action on Maryland's April 24, 1998 SIP revision (See 64 FR 70397, December 16, 1999), EPA disagrees that the Baltimore area local modeling predicts ozone concentrations so far in excess of the ozone NAAQS that a weight of evidence analysis should not even be considered in the demonstration of attainment.[6] Maryland's ozone attainment demonstration is primarily based on photochemical grid modeling of a July 1991 episode. Because of the severity of the July 1991 episode, photochemical grid modeling for the Baltimore area predicts values above the standard. However, the July 1991 episode is a very severe ozone episode with a meteorological ozone forming potential ranking of 10 (Cox and Chu 1996). The Cox and Chu analysis ranked all summer days over the past 50 years according to the severity of each day's meteorological ozone forming potential. In 1996, EPA issued additional guidance[7] to update the 1991 guidance referenced in 40 CFR 50 Appendix W by making the modeled attainment test more closely reflect the form of the NAAQS and in doing so allowing some modeled exceedances on very severe episode days in addition to allowing the consideration of other evidence to address uncertainties in the modeling databases and application. Due to the severity of the July 1991 episode, a peak modeled concentration of 140 ppb is, according to EPA's 1996 modeling guidance, consistent with attainment. While the peak modeled concentration for the July 1991 episode in the Baltimore area was 147 ppb, this was likely to be an over-prediction, and in any event, was close enough to 140 ppb for Maryland to consider other information to determine the likelihood of attainment. 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. 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 the WOE determination.

Maryland used WOE to show that the Baltimore area is likely to attain. Maryland's primary WOE analysis is

[6] Technical Support Document for the Maryland One-Hour Ozone Attainment Demonstration for the Baltimore Ozone Nonattainment Area (MD 074–3046). November 30, 1999.

[7] Guidance on the Use Of Modeled Results to Demonstrate Attainment of the Ozone NAAQS. EPA-454/B–95–007, June 1996.

based on EPA's 1999 guidance[8] in which an attainment year design value is predicted using relative changes in peak ozone concentration from the base year to the attainment year using local scale modeling results. 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. In the case where the calculated attainment year design value is above the standard, the 1999 guidance provides a methodology for identifying additional emission reductions not modeled, that are or will be approved into the SIP, 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 monitored ozone and precursors. The resulting attainment year design value meets the NAAQS. Even though an exceedance of the NAAQS was modeled, Maryland's WOE demonstration shows that the Baltimore area is projected to experience enough air quality improvement to demonstrate attainment in 2005, *i.e.,* provides for a 2005 year projected design value below the standard.

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.[9] 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

[8] "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: *www.epa.gov/ttn/scram.*

[9] 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.

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 Baltimore 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 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.[10] 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 met 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 previously, after concluding that the circumstances warrant consideration of an enforceable commitment—as they do for the Baltimore 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 Baltimore area, Maryland's commitment addresses only 9.5 percent VOC and 0 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 Baltimore 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 submit and implement the measures within a time period fully consistent with the Baltimore area attaining the standard by its approved attainment date.

The third factor, EPA has considered in determining to approve limited commitments for the Baltimore 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

[10] 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.''

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 or the ability of these areas to meet their ROP requirement. 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 Baltimore 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 specified short-term dates, and that obligation is enforceable by EPA and the public. Moreover, as discussed in the proposal and TSD, 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 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 states must provide a justification for why they were determined to not be RACM.

Response: EPA reviewed the initial SIP submittals for the Baltimore 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 20, 2001, the State of Maryland submitted a revision to its 2005 attainment demonstration SIP for the Baltimore area which consists of an analysis of RACM. 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 timely comments on that September 7, 2001 SNPR. Based on this SIP supplement, EPA has concluded that the SIP for the Baltimore area meets the requirement for adopting RACM. In this final rule, EPA is approving Maryland's 2005 attainment demonstration plan for the Baltimore area including its RACM analysis and determination. This action that EPA is taking to approve the RACM analysis and determination of Maryland's attainment demonstration SIP for the Baltimore area is consistent with similar actions EPA is taking in final rules also signed on October 15, 2001 (which have been or soon will be published in the **Federal Register**) to approve attainment demonstrations and RACM analyses for other severe ozone nonattainment areas, specifically that for the Houston-Galveston area.

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 20, 2001, as a supplement to its attainment demonstration SIP for the Baltimore 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 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.

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 20, 2001 as a supplement to its 2005 attainment demonstration SIP for the Baltimore area. We received no timely comments on that SNPR. In this final rule, EPA is approving Maryland's 2005 attainment demonstration plan for the Baltimore area including its RACM analysis and determination.

Although EPA does not believe that section 172(c)(1) requires implementation of additional measures for the Maryland portion of the Baltimore 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 Baltimore area 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: There were several comments submitted related to the revised motor vehicle emission budgets of the December 21, 1999 submittal of the revised 2005 attainment plan. We received comments which asserted that when Maryland submitted a SIP revising the motor vehicle emissions budgets on December 21, 1999, that submittal is equivalent to submitting a new attainment demonstration and would therefore require a new photochemical grid modeling demonstration. Other commenters asserted that EPA could not determine that the motor vehicle emissions budgets of the December 21, 1999 submittal were adequate and could not, therefore, approve the attainment demonstration, unless the SIP demonstrated that increasing the motor vehicle emissions budgets will not interfere with any control strategy SIP's attainment requirements. Similar comments asserted that such a demonstration can only be based upon a current inventory of emissions from all sources and the emission reductions associated with the control strategies identified in the SIP are accurate under current circumstances. Other comments asserted that when Maryland submitted revised motor vehicle emissions budgets to reflect updated fleet data to EPA on December 21, 1999, that submittal demonstrated that motor vehicle emissions, due to aggregate motor vehicle mileage and other relevant parameters, were no longer consistent with the demonstration of attainment. Another comment contended that Maryland must revise the SIP to include transportation control measures (TCMs) for the area, including but not limited to, those listed in section 108(f) of the CAA, or, alternatively Maryland could submit a new attainment demonstration accounting for the increased vehicle emissions projections. A similar comment questioned why the SIP revision submitted on December 21, 1999 did not explain why the motor vehicle emissions budgets will not require corresponding reductions in emissions from other sources, or the adoption of additional TCMs. A comment specifically asserted that the Baltimore area is subject to CAA section 182(c)(5), which requires periodic submission of a demonstration that current aggregate vehicle milage and other relevant parameters are consistent with those in the attainment demonstration.

Response 2: EPA interprets CAA section 185(c)(2)(A) to require that the attainment demonstration for a serious or worse area to be based upon photochemical grid modeling. However, EPA never interpreted this section to require a new modeling demonstration to be necessary with every revision, such as revised budgets, to an attainment SIP. EPA believes that section 110(a)(2)(I) only requires SIP revisions for nonattainment areas to comply with the applicable part D requirements and does not require each of the part D requirements to be performed anew—especially in the case of amendments to previously submitted SIP revisions. For the reasons outlined in the December 16, 1999 NPR and in response to other comments regarding the attainment demonstration and weight of evidence, EPA has concluded that the photochemical grid modeling submitted prior to December 21, 1999 for the attainment demonstration is sufficient.

The revision to the attainment demonstration plan submitted by Maryland on December 21, 1999 included, *among other things,* revised mobile budgets. That December 21, 1999 submittal also included an enforceable commitment by the state to adopt additional measures to reduce, ton/day for ton/day, the increases in motor vehicle emissions of NO_X and VOC resulting from the use of updated vehicle registration data. Those budgets were declared adequate on February 15, 2000 (Letter from Katz to DeBiase). The effective date of that adequacy finding for those budgets was March 8, 2000. See 65 FR 8701, February 22, 2000.

Most relevant to final approval of the attainment plan is the fact that the revision to the attainment demonstration submitted by Maryland on December 28, 2000, made to reflect the benefits of the Tier2/sulfur in fuel rulemaking, included revised mobile budgets. The budgets of the December 28, 2000 submittal were found adequate June 19, 2001 (Letter from Katz to DeBiase). The effective date of that adequacy finding for those budgets was July 20, 2001 (See 66 FR 35421, published July 5, 2001). The revised budgets of the December 28, 2000 submittal are lower than all previous budgets submitted in conjunction with the attainment demonstration SIP for the Baltimore area. These budgets are based upon a current inventory of emissions from all sources and the emission reductions associated with the control strategies identified in the SIP. The revised budgets of the2005 attainment demonstration SIP for the Baltimore area, submitted on December 28, 2000, are the budgets being approved with this final rule.

EPA interprets the Act's section 182(c)(5) requirement to apply only after there is an approved attainment demonstration or a promulgated Federal implementation plan. Therefore, this requirement is not a prerequisite for approval.

EPA has concluded that the budgets that are being approved in this action are adequate, and hence approvable, because these motor vehicle emissions budgets, when considered together with all other emissions sources, are consistent with applicable requirements for attainment. See 40 CFR 93.118(e)(4)(iv). EPA is approving Maryland's attainment demonstration because it is supported by an adequate modeling demonstration and enforceable commitments, the measures upon which the modeling demonstration are based are creditable, and the motor vehicle emissions budgets are low enough in comparison to those consistent with the control strategy's emission reductions necessary for attainment.

Comment 3: 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 was due three years after June 30, 1997 and because there is no demonstration that Maryland is meeting rate of progress requirements.

Response 3: EPA believes that 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 independently required actions, 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.

Comment 4: Maryland should not be permitted to initiate irrevocable transportation projects when its attainment demonstration is based on questionable shortfall calculations.

Response 4: The transportation conformity process is intended to prevent irrevocable investments in transportation projects that would worsen air quality. EPA has determined that Maryland's attainment demonstration includes motor vehicle emissions budgets that are adequate for this purpose. EPA is approving Maryland's enforceable commitment to adopt additional measures, that will not limit highway construction consistent with that permitted under the budget EPA has found adequate, to strengthen the attainment demonstration.

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 attainment demonstration for the Baltimore area includes a commitment to revise the motor vehicle emissions budgets within one year after MOBILE6 is released. EPA is approving that 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.J. 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 in the Baltimore attainment demonstration 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. See the discussion at Section I.J. 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. The Baltimore attainment demonstration 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 SIP-approved commitment, EPA agrees that it 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 using MOBILE6 within one year of its 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 the attainment demonstration SIP for the Baltimore 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 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 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 1: 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 1: Architectural and Industrial Maintenance (AIM) Coatings: On March 22, 1995 EPA issued a memorandum [11] 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 [12], many states claimed a 37

[11] ''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.

[12] ''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.

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 [13], 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, 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.

Comment 2: We received comments that EPA should not approve Maryland's attainment demonstration because Maryland relied upon an EPA guidance memorandum that was based upon the proposed rulemaking's estimates for reductions for architectural and industrial maintenance coatings.

Response 2: EPA's March 22, 1995 memorandum [14] allowed states to 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 correctly assumed a 20 percent reduction from AIM coatings source categories in its attainment and ROP plans. The basis for the 20 percent reductions achieved by the final rule is documented in the rulemaking docket for the AIM coatings final rule in a memorandum ''VOC Emissions Reductions from the Final National Architectural Coatings Rule'' from Chris Sarsony, ERG, to Linda Herring, U. S. EPA, dated July 27, 1998 (docket A–92–18, item number IV–B–2).

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 the 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 the Baltimore 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 Baltimore severe nonattainment area is 25 tons per year or more as required by the Act.

[13] ''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.

[14] ''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.

N. Attainment and Post-1999 Rate of Progress Demonstration

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.

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 6, 2001 (66 FR 40947), EPA published a notice of proposed rulemaking (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 Baltimore 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 rate of progress plan for this area for all years after 1996 through the attainment year of 2005. See 66 FR 49108, September 26, 2001.

As provided in EPA's final action on the Maryland's ROP plan (66 FR 49108), the state is relying on emission reductions achieved within the Baltimore 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 Baltimore 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 herein 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 the following paragraphs) 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 state 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 state. 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 States 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.[15] 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 in this document 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 has been approved into the 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

[15] October 30, 2000 is the first business day following the expiration of the 128-day period.

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 its state rule which has its own state limits and additional requirements such as application equipment requirements as discussed in a previous response to 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 one-hour ozone attainment demonstration SIP revision for the Baltimore area which was submitted on April 29, 1998, and revised on August 18, 1998, December 21, 1999, December 28, 2000, and August 20, 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 Baltimore 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 necessary for attainment 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 Baltimore Area

EPA is approving the following mobile budgets of the Baltimore area 2005 attainment plan:

TRANSPORTATION CONFORMITY BUDGETS FOR THE BALTIMORE AREA

Type of control strategy SIP	Year	VOC (TPD)	NO_X (TPD)	Effective date of adequacy determination
Attainment Demonstration	2005	45.5	96.9	July 20, 2001, (See 66 FR 35421, published July 5, 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.

V. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning regulations That significantly Affect Energy Supply, Distribution, or Use' (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 state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 **Note**) do not apply. 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 31, 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 Baltimore severe nonattainment area submitted by the Maryland Department of the Environment 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,

Acting 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 V—Maryland

2. Section 52.1076 is amended by adding paragraphs (k) and (l) to read as follows:

§ 52.1076 Control strategy plans for attainment and rate-of-progress: ozone.

* * * * *

(k) EPA approves the attainment demonstration for the Baltimore 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 20, 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.

(l) EPA approves the following mobile budgets of the Baltimore area attainment plan:

TRANSPORTATION CONFORMITY BUDGETS FOR THE BALTIMORE AREA

Type of control strategy SIP	Year	VOC (TPD)	NO_X (TPD)	Effective date of adequacy determination.
Attainment Demonstration	2005	45.5	96.9	July 20, 2001, (See 66 FR 35421, published July 5, 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. 01–26681 Filed 10–29–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–129–1–7471a; FRL–7091–3]

Approval and Promulgation of Implementation Plans; Texas; Control of Air Pollution from Volatile Organic Compounds, Solvent Using Processes, Surface Coating Processes, Aerospace Manufacturing and Rework Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is taking direct final action on revisions to the Texas State Implementation Plan (SIP). These revisions concern Control of Air Pollution from Volatile Organic Compounds (VOC), Solvent Using Processes, Surface Coating Processes, Aerospace Manufacturing and Rework Operations. The EPA is approving these revisions to regulate emissions of VOCs in accordance with the requirements of the Federal Clean Air Act (the Act). The EPA is approving these revisions as meeting the Reasonably Available Control Technology (RACT) requirements under the provisions of the Act. The EPA is also removing three site-specific alternate RACT (ARACT) determinations from the Texas SIP, since the VOC revisions we are approving today into the Texas SIP are now RACT for the three sites.

DATES: This rule is effective on December 31, 2001 without further notice, unless EPA receives adverse comment by November 29, 2001. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD–L), at the EPA Region 6 Office listed below. Copies of documents relevant to this action are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Dallas, Texas 75202–2733.

Texas Natural Resource Conservation Commission, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Shar, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–6691.

SUPPLEMENTARY INFORMATION:

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Throughout this document ''we,'' ''us,'' and ''our'' means EPA.

1. What Action Is EPA Taking?

On July 13, 2000, the Governor of Texas submitted a revised Chapter 115, ''Control of Air Pollution From Volatile Organic Compounds,'' as a revision to the SIP. The July 13, 2000, SIP submittal concerned Solvent Using Processes, Surface Coating Processes, Aerospace Manufacturing and Rework Operations. The Governor also requested that the revised Chapter 115 replace three site-specific ARACT determinations EPA previously approved as part of the Texas SIP.

On March 27, 1998, EPA amended the National Emission Standards for Hazardous Air Pollutants (NESHAP) final rule and released the final CTG Document for Aerospace Manufacturing and Rework Facilities. *See* 63 FR 15006. The EPA released the draft CTG for this source category at the same time as we proposed to amend the NESHAP for Aerospace Manufacturing and Rework Facilities. *See* 61 FR 55842, published October 29, 1996. Earlier, we had established the final NESHAP standards for Aerospace Manufacturing and Rework Facilities. *See* 60 FR 45948, published on September 1, 1995.

On January 20, 1994, we approved an Alternate Reasonably Available Control Technology (ARACT) demonstration for Air Force Plant 4, operated by the Lockheed Corporation of Fort Worth, Texas. *See* 59 FR 2991.

On May 30, 1997, we approved an ARACT demonstration for Bell Helicopter Textron, Incorporated; Bell Plant 1 Facility of Fort Worth, Texas. *See* 62 FR 29297.

On February 9, 1998, we approved an ARACT demonstration for Raytheon TI Systems, Inc., (RTIS) of Dallas, Texas. *See* 63 FR 6491.

The final NESHAP rule revision and the CTG document for Aerospace Manufacturing and Rework Operations, as published on March 27, 1998, are more comprehensive and detailed than the existing SIP approved ARACTs for these companies.

The TNRCC has incorporated the contents of the Aerospace Manufacturing and Rework Operations' CTG into Chapter 115, and is requesting that EPA remove the existing SIP ARACTs for the three Aerospace Manufacturing and Rework companies from the approved Texas SIP, and replace them with the revised Chapter 115 rules.

The State also made non-substantive revisions to the Chapter 115 rules, *e.g.,* substituting federal definitions. The following Table contains title of the rule, rule's log number, and a summary of the affected sections, under the proposed rule revision.

TABLE I.—LOG NUMBER, TITLE, AND AFFECTED SECTIONS OF THE RULE

Rule log No.	Title	Affected sections
1999–023–115–AI	Surface Coating	115.420 Surface Coating Definitions. 115.421 Emission Specification. 115.422 Control Requirements. 115.423 Alternate Control Requirements. 115.424 Inspection Requirements. 115.425 Testing Requirements. 115.426 Monitoring and Recordkeeping Requirements. 115.427 Exemptions. 115.429 Counties and Compliance Schedules.

We are approving revisions to the Texas SIP concerning control of VOC emissions from Surface Coating Processes, Aerospace Manufacturing and Rework Operations. We are approving the rule revisions under sections 110(k)(3) and 183(b)(3) of the Act, as meeting the RACT requirements under section 182(b)(2) of the Act. We are of the opinion that these rule revisions will reduce the aggregate VOC emissions, and are consistent with our CTGs and other applicable RACT guidance. Therefore, we are removing from the Texas SIP, the ARACTS for Lockheed Air Force Plant 4, Bell Helicopter Textron Plant 1, and Raytheon TI Systems. These three sources will now, for purposes of federal enforcement under the Texas SIP, be subject to the requirements of the SIP-approved Chapter 115, rather than the previously approved ARACT determinations. For more information on this SIP revision and our evaluation, please refer to our Technical Support Document (TSD) dated November 2000.

2. Where Can I Find EPA Guidelines for Aerospace Manufacturing and Rework Operations?

You can find our guidelines on Aerospace Manufacturing and Rework Operations in 63 FR 15006, published on March 27, 1998. We have attached a copy of this document with our TSD dated July 2001.

3. What Is a CTG?

A CTG is an EPA document that establishes a ''presumptive norm'' for RACT for a specific VOC source category. Under the pre-amended Act, EPA issued CTG documents for 29 categories of VOC sources. Section 183 of the amended Act requires that EPA issue 13 new CTGs. Appendix E of the General Preamble of Title I (57 FR 18077) lists the categories for which EPA plans to issue new CTGs.

4. What Is the Aerospace CTG?

We issued a CTG pursuant to section 183 to reduce VOC emissions from aerospace coatings and solvents on March 27, 1998. *See* 63 FR 15006. This CTG applies to aerospace coating operations with the minimum potential to emit of 50 tons per year (tpy) of VOC. This CTG addresses RACT for control of VOC emissions from aerospace and rework facilities. Emission limits for processes also addressed in the final revised NESHAP are identical to the NESHAP limits.

5. Why Do We Regulate VOCs?

Oxygen in the atmosphere reacts with VOCs and Oxides of Nitrogen to form ozone, a key component of urban smog. Inhaling even low levels of ozone can trigger a variety of health problems including chest pains, coughing, nausea, throat irritation, and congestion. It also can worsen bronchitis and asthma. Exposure to ozone can also reduce lung capacity in healthy adults.

6. Why Is Texas Adopting EPA's Guidelines for the Aerospace Manufacturing and Rework Operations?

Texas adopted EPA's guidelines for the Aerospace Manufacturing and Rework Operations into its Chapter 115 rules, because (1) our guidelines are more comprehensive and detailed than the existing SIP approved ARACTs for Aerospace Manufacturing and Rework Operations, and (2) those companies with a SIP-approved ARACT determination will not have to comply with two different sets of regulations, *i.e.,* the SIP's ARACT requirements versus the NESHAP rule, for their surface coating processes.

For detailed evaluation of the specific provisions of this rule revision, please see our TSD dated November 2000.

7. Will These Changes Meet the Act's RACT Requirements?

Yes, the new aerospace rules and the non-substantive, administrative changes will continue to meet the RACT requirements, because they will (1) delete and remove unnecessary requirements, (2) reduce confusion, (3) streamline regulations, (4) improve applicability determination, and (5) enhance compliance determination for enforcement purposes. They are consistent with EPA's CTGs and other RACT guidance. For these reasons we are approving the proposed rule revisions into the Texas SIP.

8. What Is a State Implementation Plan?

Section 110 of the Act requires States to develop air pollution regulations and control strategies to ensure that State air quality meets the National Ambient Air Quality Standards (NAAQS) that EPA has established. Under section 109 of the Act, EPA established the NAAQS to protect public health. The NAAQS address six criteria pollutants. These criteria pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each State may submit these regulations and control strategies to us for approval and incorporation into the federally enforceable SIP. Each State has a SIP designed to protect air quality. These SIPs can be extensive, containing State regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

9. What Is the Federal Approval Process for a SIP?

When a State wants to incorporate its regulations into the federally enforceable SIP, the State must formally adopt the regulations and control strategies consistent with State and Federal requirements. This process includes a public notice, a public hearing, a public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a State adopts a rule, regulation, or control strategy, the State may submit the adopted provisions to us and request that we include these provisions in the federally enforceable SIP. We must then decide on an appropriate Federal action,

provide public notice on this action, and seek additional public comment regarding this action. If we receive adverse comments, we must address them prior to a final action.

Under section 110 of the Act, when we approve all State regulations and supporting information, those State regulations and supporting information become a part of the federally approved SIP. You can find records of these SIP actions in the Code of Federal Regulations at Title 40, part 52, entitled ''Approval and Promulgation of Implementation Plans.'' The actual State regulations that we approved are not reproduced in their entirety in the CFR but are ''incorporated by reference,'' which means that we have approved a given State regulation with a specific effective date.

10. What Does Federal Approval of a SIP Mean to Me?

A State may enforce State regulations before and after we incorporate those regulations into a federally approved SIP. After we incorporate those regulations into a federally approved SIP, EPA has the authority to take enforcement action against violators of these regulations. Citizens have also legal recourse to address violations as described in section 304 of the Act.

11. What Areas in Texas Will These Rules Affect?

These rules will affect the companies with surface coatings associated with the Aerospace Manufacturing and Rework Operations within the State of Texas that have a potential to emit at least 50 tpy of VOCs; specifically, Bell Helicopter Textron, Raytheon TI Systems, Inc., and Lockheed Corporation, which are in the Dallas/Fort Worth 1-hour ozone nonattainment area. If you are one of such companies, you need to refer to these rules to find out if and how these rules will affect you.

Final Action

The EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the ''Proposed Rules'' section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are received. This rule will be effective on December 31, 2001 without further notice unless we receive adverse comment by November 29, 2001. If EPA receives adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

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 (Pub. L 104–4). This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 **Note**) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. section 804(2). This rule will be effective December 31, 2001 unless EPA receives adverse written comments by November 29, 2001.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 31, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be

challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2)of the Act.)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: October 10, 2001.

Gregg A. Cooke,

Regional Administrator, Region 6.

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 SS—Texas

2. In § 52.2270 the table in paragraph (c) is amended under Chapter 115, Subchapter E, by removing the entry for ''Section 115.421 to 115.429'' and adding in its place a new heading ''Division 2: Surface Coating Processes'' and individual entries for Sections 115.420, 115.421, 115.422, 115.423, 115.424, 115.425, 115.426, 115.427, and 115.429 to read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/Subject	State submittal/approval date	EPA approval date	Explanation
*	*	*	*	*
Chapter 115 (Reg 5)—Control of Air Pollution from Volatile Organic Compounds				
*	*	*	*	*
Subchapter E: Solvent-Using Processes				
*	*	*	*	*
Division 2: Surface Coating Processes				
Section 115.420	Surface Coating Definitions	June 29, 2000	October 29, 2001	
Section 115.421	Emission Specifications	June 29, 2000	October 29, 2001	
Section 115.422	Control Requirements	June 29, 2000	October 29, 2001	
Section 115.423	Alternate Control Requirements	June 29, 2000	October 29, 2001	
Section 115.424	Inspection Requirements	June 29, 2000	October 29, 2001	
Section 115.425	Testing Requirements	June 29, 2000	October 29, 2001	
Section 115.426	Monitoring and Recordkeeping Requirements.	June 29, 2000	October 29, 2001	
Section 115.427	Exemptions	June 29, 2000	October 29, 2001	
Section 115.429	Counties and Compliance Schedules.	June 29, 2000	October 29, 2001	
*	*	*	*	*

3. Section 52.2299 is amended by adding a new paragraph (c)(121) to read as follows:

§ 52.2299 Original identification of plan section.

* * * * *

(C) * * *

(121) Revisions submitted by the Governor on July 13, 2000, that remove approval of the Alternate Reasonably Available Control Technology (ARACT) for Lockheed Corporation, Bell Helicopter Textron, Incorporated; Bell Plant 1, and Raytheon TI Systems, Inc., (RTIS).

[FR Doc. 01–27107 Filed 10–29–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA–4188; FRL–7090–1]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; VOC and NO_X RACT Determinations for 14 Individual Sources in the Philadelphia-Wilmington-Trenton Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

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

EFFECTIVE DATE: This final rule is effective on November 14, 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; the Air and Radiation Docket and

Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Marcia Spink (215) 814–2014 or by e-mail at spink.marcia@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On December 7, 1998, February 2, 1999, April 20, 1999, March 23, 2001 (two separate submissions), and July 5, 2001, PADEP submitted revisions to the Pennsylvania SIP to establish and impose RACT for several sources of VOC and/or NO_X. This rulemaking pertains to fourteen (14) of those sources. The remaining sources are or have been the subject of separate rulemakings. The Commonwealth's submittals consist of plan approvals and operating permits which impose VOC and/or NO_X RACT requirements for each source. These sources are all located in the Philadelphia area and include Aldan Rubber Company; Arbill Industries, Inc.; Bethlehem Lukens Plate; Braceland Brothers, Inc.; Graphic Arts, Inc.; International Business Systems; McWhorter Technologies; Montenay Montgomery Ltd.; Newman and Company; Northeast Foods; Northeast Water Pollution Control Plant (Philadelphia Water Department); O'Brien (Philadelphia) Cogeneration, Inc.—Northeast Water Pollution Control Plant; O'Brien (Philadelphia) Cogeneration, Inc.—Southwest Water Pollution Control Plant; and Pearl Pressman Liberty.

On September 10, 2001 (66 FR 46953), EPA published a direct final rule and a companion notice of proposed rulemaking (66 FR 46971) to approve these SIP revisions. On October 9, 2001, we received adverse comments on our direct final rule from the Citizens for Pennsylvania's Future (PennFuture). On October 10, 2001, EPA signed a timely withdrawal for publication in the **Federal Register** informing the public that the direct final rule did not take effect. We indicated in our September 10, 2001 direct final rulemaking that if we received adverse comments, EPA would address all public comments in a subsequent final rule based on the proposed rule (66 FR 46971). This is that subsequent final rule. A description of the RACT determination(s) made for each source was provided in the September 10, 2001 direct final rule and will not be restated here. A summary of the comments submitted and EPA's responses are provided in Section II of this document.

II. Public Comments and Responses

On October 9, 2001, the Citizens for Pennsylvania's Future (PennFuture) submitted adverse comments on the proposed rule published by EPA in the **Federal Register** on September 10, 2001 to approve case-by-case RACT SIP submissions from the Commonwealth for NO_X and or VOC sources located in the Philadelphia area. We also received letters of clarification from Montenay Energy Resources of Montgomery County; Pepper Hamilton LLP on behalf of its client, Bethlehem Steel Corporation; and from PADEP. A summary of those comments and EPA's responses are provided below.

A. Comment: PennFuture comments that EPA has conducted no independent technical review, and has prepared no technical support document to survey potential control technologies, determine the capital and operating costs of different options, and rank these options in total and marginal cost per ton of NO_X and VOC controlled. In citing the definition of the term ''RACT,'' and the Strelow Memorandum [Roger Strelow, Assistant Administrator for Air and Waste Management, EPA, December 9, 1976, cited in *Michigan* v. *Thomas,* 805 F.2d 176, 180 (6th Cir. 1986) and at 62 FR 43134, 43136 (1997)], PennFuture appears to comment that in every situation, RACT must include an emission rate. PennFuture asserts that EPA should conduct its own RACT evaluation for each source, or at a minimum document a step-by-step review demonstrating the adequacy of state evaluations, to ensure that appropriate control technology is applied. The commenter also believes that EPA's failure to conduct its own independent review of control technologies has resulted in our proposing to approve some RACT determinations that fail to meet the terms of EPA's own RACT standard.

Response: On March 23, 1998 (63 FR 13789), EPA granted conditional limited approval of Pennsylvania's generic RACT regulations, 25 PA Code Chapters 121 and 129, thereby approving the definitions, provisions and procedures contained within those regulations under which the Commonwealth would require and impose RACT. Subsection 129.91, *Control of major sources of NO_X and VOCs,* requires subject facilities to submit a RACT plan proposal to both the Pennsylvania Department of Environmental Protection (DEP) and to EPA Region III by July 15, 1994 in accordance with subsection 129.92, entitled, *RACT proposal requirements.* Under subsection 129.92, that proposal is to include, among other information: (1) A list each of subject source at the facility; (2) The size or capacity of each affected source, and the types of fuel combusted, and the types and amounts of materials processed or produced at each source; (3) A physical description of each source and its operating characteristics; (4) Estimates of potential and actual emissions from each affected source with supporting documentation; (5) A RACT analysis which meets the requirements of subsection 129.92(b), including technical and economic support documentation for each affected source; (6) A schedule for implementation as expeditiously as practicable but not later than May 15, 1995; (7) The testing, monitoring, recordkeeping and reporting procedures proposed to demonstrate compliance with RACT; and (8) any additional information requested by the DEP necessary to evaluate the RACT proposal. Under subsection 129.91, the DEP will approve, deny or modify each RACT proposal, and submit each RACT determination to EPA for approval as a SIP revision.

The conditional nature of EPA's March 23, 1998 conditional limited approval did not impose any conditions pertaining to the regulation's procedures for the submittal of RACT plans and analyses by subject sources and approval of case-by case RACT determinations by the DEP. Rather, EPA stated that ''* * * RACT rules *may not merely be procedural rules* (emphasis added) that require the source and the State to later agree to the appropriate level of control; rather the rules must identify the appropriate level of control for source categories or individual sources.''

On May 3, 2001 (66 FR 22123), EPA published a rulemaking determining that Pennsylvania had satisfied the conditions imposed in its conditional limited approval. In that rulemaking, EPA removed the conditional status of its approval of the Commonwealth's generic VOC and NO_X RACT regulations on a statewide basis. EPA received no public comments on its action and that final rule removing the conditional status of Pennsylvania's VOC and NO_X RACT regulations became effective on June 18, 2001. As of that time, Pennsylvania's generic VOC and NO_X RACT regulations retained a limited approval status. On September 6, 2001 (66 FR 46571), EPA proposed to remove the limited nature of its approval of Pennsylvania's generic RACT regulation in the Philadelphia area. EPA received no public comments on that proposal. Final action converting the limited

approval to full approval shall occur once EPA has completed rulemaking to approve either (1) the case-by-case RACT proposals for all sources subject to the RACT requirements currently known in the Philadelphia area *or* (2) for a sufficient number of sources such that the emissions from any remaining subject sources represent a de minimis level of emissions as defined in the March 23, 1998 rulemaking (63 FR 13789).

EPA agrees that it has an obligation to review the case-by-case RACT plan approvals and/or permits submitted as individual SIP revisions by Commonwealth to verify and determine if they are consistent with the RACT requirements of the Act and any relevant EPA guidance. EPA does not agree, however, that this obligation to review the case-by-case RACT determinations submitted by Pennsylvania necessarily extends to our performing our own RACT analyses, independent of the sources' RACT plans/analyses (included as part of the case-by case RACT SIP revisions) or the Commonwealth's analyses. EPA first reviews this submission to ensure that the source and the Commonwealth followed the SIP-approved generic rule when applying for and imposing RACT for a specific source. Then EPA performs a thorough review of the technical and economic analyses conducted by the source and the state. If EPA believes additional information may further support or would undercut the RACT analyses submitted by the state, then EPA may add additional EPA-generated analyses to the record.

While RACT, as defined for an individual source or source category, often does specify an emission rate, such is not always the case. EPA has issued Control Technique Guidelines (CTGs) which states are to use as guidance in development of their RACT determinations/rules for certain sources or source categories. Not every CTG issued by EPA includes an emission rate. There are several examples of CTGs issued by EPA wherein equipment standards and/or work practice standards alone are provided as RACT guidance for all or part of the processes covered. Such examples include the CTGs issued for Bulk gasoline plants, Gasoline service stations—Stage I, Petroleum Storage in Fixed-roof tanks, Petroleum refinery processes, Solvent metal cleaning, Pharmaceutical products, External Floating roof tanks and Synthetic Organic Chemical Manufacturing (SOCMI)/polymer manufacturing. (The publication numbers for these CTG documents may be found at *http://www.epa.gov/ttn/catc/dir1/ctg.txt).*

EPA disagrees with PennFuture's general comment that our failure to conduct our own independent review of control technologies for every case-by-case RACT determination conducted by the Commonwealth has resulted in our proposing to approve some RACT determinations that fail to meet the terms of our own RACT standard. PennFuture submitted comments specific to the case-by-case RACT determinations for two located in the Philadelphia area, namely for Kurz-Hastings and GATX Terminals Corporation. EPA summarizes those comments and provides responses in the final rule pertaining to those sources.

B. Comment: PennFuture comments that when EPA reviewed Pennsylvania's RACT program, it noted that Pennsylvania coal-fired boilers with a rated heat input of equal to or greater than 100 million Btu per hour ''are some of the largest NO_X emitting sources in the Commonwealth and in the Northeast United States'' [63 FR 13789, 13791 (1998)] and as such should have numeric emission limitations imposed as RACT whether or not they install presumptive RACT (under 25 Pa.Code 129.93) to guarantee that sources would achieve quantifiable emissions reductions under the RACT program. PennFuture goes on to comment that because EPA has not conducted and documented a technical review of Pennsylvania case-by-case RACT submissions, EPA has not demonstrated that these large boilers are subject to ''numeric emission limitations'' under RACT. EPA must conduct a thorough RACT evaluation or review for each such source, and must document the application of numeric emission limits and quantifiable reductions for each coal-fired boiler with a rated heat input of over 100 million Btu per hour.

Response: Circumstances may exist wherein a state could justify otherwise, however, in general, EPA agrees with PennFuture that coal-fired boilers with a rated heat input of equal to or greater than 100 million Btu per hour should have numeric emission limitations imposed as RACT whether or not they install presumptive RACT (under 25 Pa.Code 129.93).

As provided in the response found in II. A, EPA does not agree that it must conduct its own technical analysis of each of the case-by-case RACT determinations submitted for each RACT source in order to document that its RACT requirements include numeric emission limitations. That determination can be made by EPA when it reviews the plan approval, consent order, or permit issued to such a source as submitted by the Commonwealth as SIP revision. PennFuture's comment did not point to a specific instance where a RACT plan approval, consent order or permit imposing RACT on a coal-fired boiler with a rated heat input of equal to or greater than 100 million Btu per hour did, in fact, lack a numerical emission limitation(s). Nonetheless, pursuant to PennFuture's comment, EPA has re-examined all of the case-by-case RACT SIP submissions made by the Commonwealth for such sources located in the Philadelphia area. That re-examination, combined with information provided by the Commonwealth, indicates that each case-by-case RACT plan approval, consent order and/or permit for each coal-fired boiler with a rated heat input of equal to or greater than 100 million Btu per hour includes a numeric emission limitation. A listing of each source, its plan approval, consent order and/or permit number and its numerical emission limitation has been placed in the Administrative Records for the case-by-case RACT rulemakings for the Philadelphia area.

C. Comment: PennFuture asserts that the Commonwealth has not adopted and submitted category RACT rules for all VOC source categories for which federal control technique guidelines (CTGs) have been issued. The commenter refers to Appendix 1 of the Technical Support Document (dated May 14, 2001), prepared by EPA in support of its proposed rule to redesignate the Pittsburgh-Beaver Valley Ozone Nonattainment Area (66 FR 29270), to assert that EPA has failed to require the Commonwealth to submit VOC RACT rules for certain categories of sources. PennFuture specifically names source categories such as equipment leaks from natural gas/gas processing plants, coke oven batteries, iron and steel foundries, and publically owned treatment works and asserts that the Commonwealth has neglected a statutory requirement to adopt category RACT regulations for these and 14 other unnamed VOC source categories. PennFuture contends that the case-by-case approach for establishing and approving RACT is unacceptable under a statutory scheme that specifically requires category-wide RACT regulations for sources covered by CTGs. PennFuture's comment cites to *Wall* v. *EPA,* 2001 FED App. 0318P (6th Cir.)(Cincinnati ozone redesignation and RACT) and goes on the state that EPA should reject any proposed case-by-case VOC RACT for a source in a category for

which there is a CTG but no Pennsylvania RACT regulation.

Response: EPA has not issued CTGs for coke oven batteries, iron and steel foundries and publically owned treatment works. The Appendix 1, referred to by the commenter, lists CTG covered categories as well as source categories taken from two STAPPA/ALAPCO documents entitled, ''Meeting the 15-Percent Rate-of-Progress Requirement Under the Clean Air Act—A Menu of Options'' (September 1993) and ''Controlling Nitrogen Oxides Under the Clean Air Act—A Menu of Options'' (July 1994). The categories referenced by PennFuture are not VOC categories for which EPA has issued CTGs, but were included in Appendix A as examples of some of the types of sources that could be subject to Pennsylvania's generic RACT regulations. The Commonwealth is under no statutory obligation to adopt RACT rules for source *categories* for which EPA has not issued a CTG. In fact, CTGs do not exist for all but one of the categories to which the commenter explicitly refers.

The Act requires that states adopt regulations to impose RACT for ''major sources of VOC,'' located within those areas of a state where RACT applies under Part D of the Act [182(b)(2)(C)]. This is referred to as the non-CTG VOC RACT requirement. Moreover, EPA disagrees that there is a statutory mandate that a state adopt a source category RACT regulation even for a source category where EPA has issued a CTG. There are two statutory provisions that address RACT for sources covered by a CTG. One provides that states must adopt RACT for ''any category of VOC sources'' covered by a CTG issued prior to November 15, 1990 [182(b)(2)(A)]. The other provides that states must adopt VOC RACT for all ''VOC sources'' covered by a CTG issued after November 15, 1990 [182(b)(2)(B)]. EPA has long interpreted the statutory RACT requirement to be met either by adoption of category-specific rules or by source-specific rules for each source within a category. When initially established, RACT was clearly defined as a case-by-case determination, but EPA provided CTG's to simplify the process for states such that they would not be required to adopt hundreds or thousands of individual rules. See Strelow Memorandum dated December 9, 1976 and 44 FR 53761, September 17, 1979. EPA does not believe that Congress' use of ''source category'' in one provision of section 182(b)(2) was intended to preclude the adoption of source-specific rules.

Thus, where CTG-subject sources are located within those areas of a state where RACT applies under Part D of the Act, the state is obligated to impose RACT for the same universe of sources covered by the CTG. However, that obligation is not required to be met by the adoption and submittal of a source category RACT rule. A state may, instead, opt to impose RACT for such sources in permits, plan approvals, consent orders or in any other state enforceable document and submit those documents to EPA for approval as source-specific SIP revisions. This option has been exercised by many states, and happens most commonly when only a few CTG-subject sources are located in the state. The source-specific approach is generally employed to avoid what can be a lengthy and resource-intensive state rule adoption process for only a few sources that may have different needs and considerations that must be taken into account. EPA disagrees with the commenter's citing to *Wall* v. *EPA,* 2001 FED App. 0318P (6th Cir. Sept. 11, 2001) (Cincinnati ozone redesignation and RACT) as indicative of his contentions regarding states' obligations to adopt category-wide RACT regulations for sources covered by CTGs. The opinion rendered in the cited case neither requires states to adopt category-wide RACT regulations for sources covered by CTGs, nor does it preclude states from exercising their option to impose RACT for CTG-subject sources, on a case-by-case basis. Rather, it speaks only to the Act's requirement that states must implement RACT for CTG-subject sources in ozone nonattainment areas; and not to any specific regulatory construct by which they must do so. Pennsylvania has implemented RACT for all CTG-subject sources in the Philadelphia area, and, EPA has approved all such RACT determinations as revisions to the Pennsylvania SIP. As stated earlier, there is one source category explicitly included in PennFuture's comment for which EPA has issued a CTG, namely natural gas/gas processing plants. The Commonwealth made a negative declaration to EPA on April 13, 1993, stating that as of that date there were no applicable sources in this category. Therefore, the Commonwealth did not adopt a category RACT regulation for natural gas/gas processing plants.

D. Comment: PennFuture cites EPA correspondence [letter from Marcia Spink, EPA, to James Salvaggio, DEP, December 15, 1993] to the Commonwealth which states that establishing any dollar figure in RACT guidance will not provide for the ''automatic'' selection or rejection of a control technology or emission limitation as RACT for a source or source category. With regard to the Pennsylvania DEP's intent to finalize a NO_X RACT Guidance Document for implementation of its NO_X RACT regulation, EPA's 1993 letter stated that the document could improperly be used to establish ''bright line'' or ''cook-book'' approaches, particularly for a regulation applicable to many source categories and suggested that if the guidance document must include dollar figures/ton, it provide approximate ranges by source category. PennFuture comments that DEP issued its ''Guidance Document on Reasonably Available Control Technology for Sources of NO_X Emissions,'' March 11, 1994, and on pp. 8–9 states that the acceptable threshold is $1500 per ton, and that this figure applies to ''all source categories.'' PennFuture notes that EPA later objected to the $1500 per ton methodology as ''not generically acceptable to EPA'' [letter from Thomas Maslany, EPA, to James Salvaggio, DEP, June 24, 1997] and further stated in a **Federal Register** notice that a ''dollar per ton threshold'' is ''inconsistent with the definition of RACT'' [62 FR 43134, 37–38 (1997)].

PennFuture comments that EPA is proposing to approve RACT determinations based on a cost per ton method that EPA had previously rejected, and according to its own clearly expressed standard, EPA must not approve RACT determinations by Pennsylvania DEP that apply this $1500 per ton threshold. PennFuture asserts EPA must reject all Pennsylvania RACT determinations applying the standard of $1500 per ton, or any other ''bright line'' approach, as failing to follow EPA procedures established for Pennsylvania RACT.

Response: EPA still takes the position that a single cost per ton dollar figure may not, in and of itself, form the basis for rejecting a control technology, equipment standard, or work practice standard as RACT. The Technical Support Document prepared by EPA in support of its March 23, 1998 rulemaking [63 FR 13789] clearly indicates that the Commonwealth's document, ''Guidance Document on Reasonably Available Control Technology for Sources of NO_X Emissions.'' March 11, 1994, had not been included as part of the SIP submission of the Commonwealth's generic regulation and, therefore, had not been approved by EPA. EPA further notes that the Administrative Record of the March 23, 1998 rulemaking [63 FR 13789], in addition to the

correspondence cited by PennFuture, also includes correspondence from DEP to EPA [letter from James Salvaggio, DEP to David Arnold, EPA, September 10, 1997] stating that DEP's RACT guidance document does not establish a maximum dollar per ton for determining the cost effectiveness for RACT determinations and notes that the DEP's $1500 per ton cost effectiveness is a target value and not an absolute maximum. For example, in its analyses of the cost effectiveness of RACT control options submitted by DEP as part of the case-by-case SIP revision for Peoples Natural Gas (PNG) Valley Compressor Station's turbo charged lean burn IC engine (see the Administrative Record for 66 FR 43492), the Commonwealth included DEP interoffice memoranda (Thomas Joseph to Krishnan Ramamurthy, July 14, 1994 and Krishnan Ramamurthy to Thomas McGinley, Babu Patel, Ronald Davis, Richard Maxwell, and Devendra Verma, July 15, 1994) which spoke directly to the $1500/ton dollar figure as being a guideline and not an upper limit. These memoranda explain that although PNG initially proposed intermediate original equipment manufacturer (OEM) combustion controls which would have reduced NO_X emissions from 254.7 tons per year to 115 tons per year (by 55 %) at a cost of $1355 per ton reduced, DEP required the installation of an OEM lean combustion modification that reduced NO_X emissions from 254.7 tons per year to 76 tons per year (by 69 %) at a cost of $1684 per ton reduced. The DEP's July 15, 1994 interoffice memorandum says of the PNG RACT determination which exceeded the cost effectiveness screening level of $1500 per ton '' Tom's (Joseph) insistence for the next more stringent level of control than the company's chosen level in the case of PNG was consistent with EPA Region III's sentiment that establishing any dollar figure in RACT guidance will not provide for an ''automatic'' rejection of a control technology as RACT for a source.''

In no instance, has EPA proposed to approve a RACT determination submitted by the Commonwealth which was based solely on a conclusion that controls that cost more than $1500/ton were not required as RACT. As explained in the response provided in section II. A. of this document, EPA conducts its review of the entire case-by-case RACT SIP submittal including the source's proposed RACT plan and analyses, Pennsylvania's analyses and the RACT plan approval, consent order or permit itself to insure that the requirements of the SIP-approved generic RACT have been followed. These analyses not only evaluate and consider the costs of potential control options, but also evaluate their technological feasibility.

E. Comment: PennFuture comments that any emission reduction credits (ERCs) earned by sources subject to RACT must be surplus to all applicable state and federal requirements. Under Pennsylvania law, ERCs must be surplus, permanent, quantified, and Federally enforceable. 25 Pa.Code 127.207(1). As to the requirement that ERCs be surplus, the Pennsylvania Code states: ERCs shall be included in the current emission inventory, and may not be required by or be used to meet past or current SIP, attainment demonstration, RFP, emission limitation or compliance plans. Emission reductions necessary to meet NSPS, LAER, RACT, Best Available Technology, BACT and permit or plan approval emissions limitations or another emissions limitation required by the Clean Air Act or the [Air Pollution Control Act] may not be used to generate ERCs. 25 Pa.Code 127.207(1)(i). To be creditable, ERCs must surpass not only RACT requirements but a host of other possible sources of emission limits. PennFuture comments that some of the RACT evaluations at issue in the current EPA notices purport to establish RACT as a baseline for future ERCs. PennFuture does acknowledge that EPA notes in its boilerplate for the notices, that Pennsylvania and EPA have established a series of NO_X-reducing rules, including the recent Chapter 145 rule, to reduce NO_X at large utility and industrial sources. See, for example, 66 FR 42415, 16–17 (August 13, 2001). Because any ERCs must be surplus to the most stringent limitation applicable under State or Federal law as described in the Pennsylvania Code provision set forth above, DEP and EPA must not approve ERCs unless they surpass all such limitations in addition to any limits set by RACT.

Response: EPA agrees with this comment by PennFuture. The approval of a case-by-case RACT determination, in and of itself, does not establish the baseline from which further emission reductions may be calculated and assumed creditable under the Commonwealth's SIP-approved NSR and ERC program. Moreover, EPA's review of the Pennsylvania DEP's implementation of its approved SIP-approved NSR and ERC program indicates that the Commonwealth calculates and credits ERCs in accordance with the SIP-approved criteria for doing so as outlined in PennFuture's comment. No source for which EPA is approving a case-by-case RACT determination should assume that its RACT approval alone automatically establishes the baseline against which it may calculate creditable ERCs.

F. Comment: PennFuture comments that as in the case with Pennsylvania Power—Newcastle, EPA should compare RACT proposals to applicable acid rain program emission limits and control strategies. PennFuture contends that EPA previously disapproved a RACT proposal for the Pennsylvania Power—Newcastle plant [62 FR 43959 (1997); 63 FR 23668 (1998)] and that EPA did so on the basis that the acid rain program requires more stringent emission limits. PennFuture asserts that while EPA had originally proposed to approve this proposal, an analysis of comparable boilers and, especially, a comparison to Phase II emission limits under the acid rain program led EPA to conclude that the RACT proposal emission limits were too lenient. [62 FR at 43961]. Therefore, PennFuture contends that for sources subject to the acid rain program, EPA should consider emissions and control strategies for compliance with acid rain emission limits when evaluating proposals for compliance with RACT.

Response: Title IV of the Act, addressing the acid rain program, contains NO_X emission requirements for utilities which must be met *in addition* to any RACT requirements (see NO_X Supplement to the General Preamble at 57 FR 55625, November 25, 1992). The Act provides for a number of control programs that may affect similar sources. For example, new sources may be subject to new source performance standards (NSPS), best available control technology (BACT), and lowest achievable emission rate (LAER). Other controls, under such programs as the acid rain program or the hazardous air pollutant program may also apply to sources. However, the applicability of these other requirements, which are often more stringent than RACT, do not establish what requirements must apply under the RACT program. While these programs may provide information as to the technical and economic feasibility of reduction programs for RACT, there is no presumption that acid rain controls should be mandated as RACT.

EPA stated in the final disapproval of the NO_X RACT determination for PPNC [63 FR at 23669], that the discussion concerning average emission rates for boilers with respect to the acid rain program requirements were included in order to provide a context for EPA's proposed disapproval. EPA made clear

in its August 18, 1997 proposed disapproval of Pennsylvania Powers'—Newcastle (PPNC) RACT determination, that the basis for disapproval was a comparison between PPNC's boilers and other similar combustion units, not acid rain limits. In fact, EPA stated in the August 18, 1997 proposed disapproval that ''Without additional knowledge or information, it would be erroneous and premature to conclude that the limits in the acid rain permit are RACT.'' [62 FR at 43961]. EPA clearly stated in the final disapproval for PPNC that it did not use acid rain permit limits, or Pennsylvania's participation in any other NO_X control program, to determine PPNC RACT approvability [63 FR at 23670]. Nor has EPA intended to use participation in NO_X control programs including acid rain, in determining RACT for PPNC or any other subject sources. EPA also stated that the April 30, 1998, PPNC disapproval was based on the absence of pertinent information regarding a computerized combustion optimization system through an enforceable permit, not comparison of acid rain permit limits.

G. Clarification: On October 8, 2001, Montenay Energy Resources of Montgomery County, Inc. (Montenay) submitted a letter on EPA's September 10, 2001 rulemaking as it pertains to its facility. Montenay does not adversely comment on the rulemaking. Rather, its letter clarifies that the conditions imposed in operating permit (OP) OP–46–0010A which specify that air contaminant emissions from the two municipal waste combustors must be controlled through the use of individual Research-Cottrell spray dryer absorber using Sorbalit 1 reagent to control mercury and acid gases, Research-Cottrell fabric collectors and a selective non-catalytic reduction (SNCR) control system; and that NO_X emissions per combustor (expressed as NO_2) shall not exceed a 24-hour daily arithmetic average of 205 parts per million by volume, corrected to 7 percent oxygen, dry basis and, in accordance with 40 CFR part 60 Section 60.33b(d), 109 pounds per hour, and 477.4 tons per year were imposed by PADEP pursuant to the applicable NO_X requirements of 40 CFR part 60, subpart Cb (relating to Emission Guidelines and Compliance Times for large Municipal Waste Combustors that are constructed on or before September 20, 1994)—and not as RACT. Montenay agrees that it is subject to all of the provisions imposed in OP–46–0010A but calls attention to the distinction between the permit's NO_X RACT provisions and its NO_X provisions imposed pursuant to 40 CFR Part 60, Subpart Cb (relating to Emission Guidelines and Compliance Times for large Municipal Waste Combustors that are constructed on or before September 20, 1994). Montenay's letter also clarifies that the compliance date for 40 CFR Part 60, Subpart Cb (relating to Emission Guidelines and Compliance Times for large Municipal Waste Combustors that are constructed on or before September 20, 1994) is September of 1999 versus its RACT compliance date under the Pennsylvania approved SIP.

Response: The letter of clarification submitted by Montenay has been placed in the administrative record for this final rule. EPA agrees that OP–46–0010A issued by PADEP serves to impose on Montenay both its applicable NO_X RACT requirements as determined under 25 Pa. Code 129.91–129.95 and the applicable NO_X requirements of 40 CFR Part 60, Subpart Cb (relating to Emission Guidelines and Compliance Times for large Municipal Waste Combustors that are constructed on or before September 20, 1994). EPA also agrees that OP–46–0010A, which is being approved as a SIP revision, makes the distinction between Montenay's NO_X RACT requirements and its applicable NO_X requirements of 40 CFR Part 60, Subpart Cb (relating to Emission Guidelines and Compliance Times for large Municipal Waste Combustors that are constructed on or before September 20, 1994).

EPA notes that it is not uncommon for the same emission sources at a given facility to be subject to multiple requirements of the Act. As both the compliance deadlines for NO_X RACT and the NO_X requirements of 40 CFR part 60, subpart Cb (relating to Emission Guidelines and Compliance Times for large Municipal Waste Combustors that are constructed on or before September 20, 1994) have now passed and are fully effective, Montenay's distinction between the RACT requirements and those of 40 CFR Part 60, Subpart Cb as imposed in OP–46–0010A has no environmental effect. Moreover, it is important to note that in the event that a determination of eligible ERCs were to be sought for NO_X reductions at the facility in the future, any emission reductions would have to surplus to all applicable requirements of the Act in order to qualify as ERCs under the Pennsylvania SIP.

H. Clarification: On October 10, 2001, EPA received a letter from Pepper Hamilton LLP on behalf of its client Bethlehem Steel regarding OP–46–0011 issued to Bethlehem Lukens Plate by PADEP on December 11, 1998. The letter states that it is not making adverse comments to EPA's September 10, 2001 rulemaking. Rather, the letter states that Pepper Hamilton LLP supports approval of the case-by-case RACT determination imposed as NO_X RACT in OP–46–0011, but notes that there is an error in an emission factor cited in OP–46–0011. The comment letter explains that an amended version of OP–46–0011 was issued by PADEP on July 31, 2001 correcting the emission factor and leaving the NO_X RACT limit unchanged. The letter from Pepper Hamilton LLP states that PADEP shortly intends to submit the revised version of OP–46–0011 to EPA as a SIP revision. On October 10, 2001, PADEP submitted a letter to EPA confirming the contents of the October 10, 2001 letter from Pepper Hamilton LLP. The PADEP letter requests that EPA proceed at this time to approve OP–46–0011, as proposed on September 10, 2001, but informs us that it will expeditiously prepare and submit a SIP revision for Bethlehem Lukens Plate to correct the reference to the emission factor in OP–46–0011. The PADEP confirms that the NO_X RACT emission limit shall remain unchanged.

Response: The letter submitted by Pepper Hamilton LLP on behalf of its client Bethlehem Steel regarding OP–46–0011 has been placed in the administrative record for this final rule. As requested by PADEP, EPA will proceed to approve the version of OP–46–0011, as proposed on September 10, 2001, in this final rule. As also requested by PADEP, we will act upon the soon to be submitted SIP revision for Bethlehem Lukens Plate via the Federal rulemaking process for amending the SIP as expeditiously as practicable.

III. Final Action

EPA is approving the SIP revisions to the Pennsylvania SIP submitted by PADEP to establish and require VOC and/or NO_X RACT for fourteen major sources located in the Philadelphia area. EPA is approving these SIP submittals because the Philadelphia AMS and PADEP established and imposed these RACT requirements in accordance with the criteria set forth in the SIP-approved RACT regulations applicable to these sources. The AMS and PADEP have also imposed record keeping, monitoring, and/or testing requirements sufficient to determine compliance with the applicable RACT determinations.

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 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 State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 **Note**) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability establishing source-specific requirements for 14 named sources.

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 31, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving VOC and/or NO_X RACT for 14 sources located in the Philadelphia area may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: October 15, 2001.

James W. Newsom,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c)(185) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(185) Revisions to the Pennsylvania Regulations, Chapter 129 pertaining to VOC and NO_X RACT for 14 sources located in the Philadelphia area, submitted by the Pennsylvania Department of Environmental Protection on December 7, 1998, February 2, 1999, April 20, 1999, March 23, 2001 (two separate submissions), and July 5, 2001.

(i) Incorporation by reference.

(A) Letters submitted by the Pennsylvania Department of Environmental Protection transmitting source-specific VOC and/or NO_X RACT determinations, in the form of plan approvals and operating permits December 7, 1998, February 2, 1999, April 20, 1999, March 23, 2001 (two separate submissions), and July 5, 2001.

(B) Plan approvals (PA), Operating permits (OP) issued to the following sources:

(*1*) International Business Systems, Inc., OP–46–0049, effective October 29, 1998 and as revised December 9, 1999, except for the expiration date.

(*2*) Bethlehem Lukens Plate, OP–46–0011, effective December 11, 1998, except for the expiration date.

(*3*) Montenay Montgomery Limited Partnership, OP–46–0010A, effective April 20, 1999 and as revised June 20, 2000, except for the expiration date.

(*4*) Northeast Foods, Inc., OP–09–0014, effective April 9, 1999, except for the expiration date.

(*5*) Aldan Rubber Company, PA–1561, effective July 21, 2000, except for conditions 1.A.(1), 1.A.(2) and 1.A.(4); and conditions 2.A. and 2.C.

(*6*) Braceland Brothers, Inc., PA–3679, effective July 14, 2000.

(*7*) Graphic Arts, Incorporated, PA–2260, effective July 14, 2000.

(*8*) O'Brien (Philadelphia) Cogeneration, Inc.—Northeast Water Pollution Control Plant, PA–1533, effective July 21, 2000.

(*9*) O'Brien (Philadelphia) Cogeneration, Inc.—Southwest Water

Pollution Control Plant, PA–1534, effective July 21, 2000.

(*10*) Pearl Pressman Liberty, PA–7721, effective July 24, 2000.

(*11*) Arbill Industries, Inc., PA–51–3811, effective July 27, 1999, except for condition 5.

(*12*) McWhorter Technologies, PA–51–3542, effective July 27, 1999, except for condition 2.B. and condition 5.

(*13*) Northeast Water Pollution Control Plant, PA–51–9513, effective July 27, 1999, except for condition 1.A.(1), conditions 2.A. and 2.B., and condition 7.

(*14*) Newman and Company, PA–3489, effective June 11, 1997.

(ii) Additional Materials—Other materials submitted by the Commonwealth of Pennsylvania in support of and pertaining to the RACT determinations for the sources listed in paragraph (c)(185)(l)(B) of this section.

[FR Doc. 01–26761 Filed 10–29–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA041–4180; FRL–7089–4]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Reasonably Available Control Technology Requirements for Volatile Organic Compounds and Nitrogen Oxides in the Philadelphia-Wilmington-Trenton Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is removing the limited status of its approval of the Commonwealth of Pennsylvania State Implementation Plan (SIP) revision that requires all major sources of volatile organic compounds (VOC) and nitrogen oxides (NO_X) to implement reasonably available control technology (RACT) as it applies in the Philadelphia-Wilmington-Trenton ozone nonattainment area (the Philadelphia area). EPA is converting its limited approval of Pennsylvania's VOC and NO_X RACT regulations to full approval because EPA has approved all of the case-by-case RACT determinations submitted by Pennsylvania for the affected sources located in the Philadelphia area. The intended effect of this action is to remove the limited nature of EPA's approval of Pennsylvania's VOC and NO_X RACT regulations as they apply in the Philadelphia area.

EFFECTIVE DATE: This final rule is effective on November 29, 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; Allegheny County Health Department, Bureau of Environmental Quality, Division of Air Quality, 301 39th Street, Pittsburgh, Pennsylvania 15201; and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Marcia Spink, (215) 814–2104 or by e-mail at *spink.marcia@epa.gov.*

SUPPLEMENTARY INFORMATION

I. Background

On September 6, 2001 (66 FR 46571), EPA published a notice of proposed rulemaking (NPR) for the State of Pennsylvania. The NPR proposed to remove the limited status of EPA's approval of the Commonwealth of Pennsylvania SIP revision that requires all major sources of VOC and NO_X to implement reasonably available control technology (RACT) as it applies in the Philadelphia area. The rationale for EPA's action is explained in the NPR and will not be restated here. No comments were received on the NPR.

II. Final Action

EPA is converting its limited approval of Pennsylvania's generic VOC and NO_X RACT regulations, 25 Pa Code Chapter 129.91 through 129.95, to full approval as they apply in the five-county Philadelphia-Wilmington-Trenton ozone nonattainment area. EPA has approved all of the case-by-case RACT determinations submitted by PADEP for affected major sources of NO_X and/or VOC sources located in Bucks, Chester, Delaware, Montgomery, and Philadelphia Counties, the five counties that comprise the Pennsylvania portion of the Philadelphia area.

III. 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 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 State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 **note**) do not apply. 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 31, 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 converting EPA's limited approval of Pennsylvania's generic VOC and NO_X RACT regulations, 25 Pa Code Chapter 129.91 through 129.95, to full approval as they apply in the five-county Philadelphia-Wilmington-Trenton ozone nonattainment area may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone.

Dated: October 15, 2001.

James W. Newsom,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart NN—Pennsylvania

2. Section 52.2027 is amended by adding paragraph (b) to read as follows:

§ 52.2027 Approval Status of Pennsylvania's Generic NO_X and VOC RACT Rules.

* * * * *

(b) Effective November 29, 2001, EPA removes the limited nature of its approval of 25 PA Code of Regulations, Chapter 129.91 through 129.95 [see § 52.2020 (c)(129)] as those regulations apply to the Philadelphia-Wilmington-Trenton area. Chapter 129.91 through 129.95 of Pennsylvania's regulations are fully approved as they apply in Bucks, Chester, Delaware, Montgomery, and Philadelphia Counties, the five counties that comprise the Pennsylvania portion of the Philadelphia area.

[FR Doc. 01–26767 Filed 10–29–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA–4187; FRL–7090–2]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; VOC and NO_X RACT Determinations for Seven Individual Sources in the Philadelphia-Wilmington-Trenton Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

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

EFFECTIVE DATE: This final rule is effective on November 14, 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; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Marcia Spink (215) 814–2104 or by e-mail at *spink.marcia@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On August 1, 1995, February 2, 1999, July 27, 2001, and August 8, 2001, PADEP submitted revisions to the Pennsylvania SIP which establish and impose RACT for several sources of VOC and/or NO_X. This rulemaking pertains to seven of those sources. The remaining sources are or have been the subject of separate rulemakings. All seven sources are located in the Philadelphia area and include: G-Seven, Ltd.; Kimberly-Clark Corporation; Leonard Kunkin Associates; PECO Energy Company—Cromby Generating Station; Sunoco, Inc. (R&M)—Marcus Hook Plant; Waste Management Disposal Services of Pennsylvania, Inc. (GROWS Landfill); Waste Resource Energy, Inc. (Operator) and Shawmut Bank, Conn. National Assoc. (Owner)—Delaware County Resource Recovery Facility.

On September 11, 2001 (66 FR 47078), EPA published a direct final rule and a companion notice of proposed rulemaking (66 FR 47129) to approve these SIP revisions. On October 9, 2001, we received adverse comments on our direct final rule from the Citizens for Pennsylvania's Future (PennFuture). On October 10, 2001, EPA signed a timely withdrawal for publication in the **Federal Register** informing the public that the direct final rule did not take effect. We indicated in our September 11, 2001 direct final rulemaking that if we received adverse comments, EPA would address all public comments in a subsequent final rule based on the proposed rule (66 FR 47129). This is that subsequent final rule. A description of the RACT determination(s) made for each source was provided in the September 11, 2001 direct final rule and will not be restated here. A summary of the comments submitted and EPA's responses are provided in Section II.

II. Public Comments and Responses

On October 9, 2001, the Citizens for Pennsylvania's Future (PennFuture) submitted adverse comments on the proposed rule published by EPA in the **Federal Register** on September 11, 2001

to approve case-by-case RACT SIP submissions from the Commonwealth for NO_X and or VOC sources located in the Philadelphia area. A summary of those comments and EPA's responses are provided below.

A. *Comment:* PennFuture comments that EPA has conducted no independent technical review, and has prepared no technical support document to survey potential control technologies, determine the capital and operating costs of different options, and rank these options in total and marginal cost per ton of NO_X and VOC controlled. In citing the definition of the term ''RACT,'' and the Strelow Memorandum [Roger Strelow, Assistant Administrator for Air and Waste Management, EPA, December 9, 1976, cited in *Michigan* v. *Thomas,* 805 F.2d 176, 180 (6th Cir. 1986) and at 62 FR 43134, 43136 (1997)], PennFuture appears to comment that in every situation, RACT must include an emission rate. PennFuture asserts that EPA should conduct its own RACT evaluation for each source, or at a minimum document a step-by-step review demonstrating the adequacy of state evaluations, to ensure that appropriate control technology is applied. The commenter also believes that EPA's failure to conduct its own independent review of control technologies has resulted in our proposing to approve some RACT determinations that fail to meet the terms of EPA's own RACT standard.

Response: On March 23, 1998 (63 FR 13789), EPA granted conditional limited approval of Pennsylvania's generic RACT regulations, 25 PA Code Chapters 121 and 129, thereby approving the definitions, provisions and procedures contained within those regulations under which the Commonwealth would require and impose RACT. Subsection 129.91, *Control of major sources of NO_X and VOCs,* requires subject facilities to submit a RACT plan proposal to both the Pennsylvania Department of Environmental Protection (DEP) and to EPA Region III by July 15, 1994 in accordance with subsection 129.92, entitled, *RACT proposal requirements.* Under subsection 129.92, that proposal is to include, among other information: (1) A list of each subject source at the facility; (2) The size or capacity of each affected source, and the types of fuel combusted, and the types and amounts of materials processed or produced at each source; (3) A physical description of each source and its operating characteristics; (4) Estimates of potential and actual emissions from each affected source with supporting documentation; (5) A RACT analysis which meets the requirements of subsection 129.92 (b), including technical and economic support documentation for each affected source; (6) A schedule for implementation as expeditiously as practicable but not later than May 15, 1995; (7) The testing, monitoring, recordkeeping and reporting procedures proposed to demonstrate compliance with RACT; and (8) any additional information requested by the DEP necessary to evaluate the RACT proposal. Under subsection 129.91, the DEP will approve, deny or modify each RACT proposal, and submit each RACT determination to EPA for approval as a SIP revision.

The conditional nature of EPA's March 23, 1998 conditional limited approval did not impose any conditions pertaining to the regulation's procedures for the submittal of RACT plans and analyses by subject sources and approval of case-by case RACT determinations by the DEP. Rather, EPA stated that ''* * * RACT rules *may not merely be procedural rules* (emphasis added) that require the source and the State to later agree to the appropriate level of control; rather the rules must identify the appropriate level of control for source categories or individual sources.''

On May 3, 2001 (66 FR 22123), EPA published a rulemaking determining that Pennsylvania had satisfied the conditions imposed in its conditional limited approval. In that rulemaking, EPA removed the conditional status of its approval of the Commonwealth's generic VOC and NO_X RACT regulations on a statewide basis. EPA received no public comments on its action and that final rule removing the conditional status of Pennsylvania's VOC and NO_X RACT regulations became effective on June 18, 2001. As of that time, Pennsylvania's generic VOC and NO_X RACT regulations retained a limited approval status. On September 6, 2001 (66 FR 46571), EPA proposed to remove the limited nature of its approval of Pennsylvania's generic RACT regulation in the Philadelphia area. EPA received no public comments on that proposal. Final action converting the limited approval to full approval shall occur once EPA has completed rulemaking to approve either (1) the case-by-case RACT proposals for all sources subject to the RACT requirements currently known in the Philadelphia area *or* (2) for a sufficient number of sources such that the emissions from any remaining subject sources represent a de minimis level of emissions as defined in the March 23, 1998 rulemaking (63 FR 13789).

EPA agrees that it has an obligation to review the case-by-case RACT plan approvals and/or permits submitted as individual SIP revisions by Commonwealth to verify and determine if they are consistent with the RACT requirements of the Act and any relevant EPA guidance. EPA does not agree, however, that this obligation to review the case-by-case RACT determinations submitted by Pennsylvania necessarily extends to our performing our own RACT analyses, independent of the sources' RACT plans/analyses (included as part of the case-by case RACT SIP revisions) or the Commonwealth's analyses. EPA first reviews this submission to ensure that the source and the Commonwealth followed the SIP-approved generic rule when applying for and imposing RACT for a specific source. Then EPA performs a thorough review of the technical and economic analyses conducted by the source and the state. If EPA believes additional information may further support or would undercut the RACT analyses submitted by the state, then EPA may add additional EPA-generated analyses to the record.

While RACT, as defined for an individual source or source category, often does specify an emission rate, such is not always the case. EPA has issued Control Technique Guidelines (CTGs) which states are to use as guidance in development of their RACT determinations/rules for certain sources or source categories. Not every CTG issued by EPA includes an emission rate. There are several examples of CTGs issued by EPA wherein equipment standards and/or work practice standards alone are provided as RACT guidance for all or part of the processes covered. Such examples include the CTGs issued for Bulk gasoline plants, Gasoline service stations—Stage I, Petroleum Storage in Fixed-roof tanks, Petroleum refinery processes, Solvent metal cleaning, Pharmaceutical products, External Floating roof tanks and Synthetic Organic Chemical Manufacturing (SOCMI)/polymer manufacturing. (The publication numbers for these CTG documents may be found at *http://www.epa.gov/ttn/catc/dir1/ctg.txt).*

EPA disagrees with PennFuture's general comment that our failure to conduct our own independent review of control technologies for every case-by-case RACT determination conducted by the Commonwealth has resulted in our proposing to approve some RACT determinations that fail to meet the terms of our own RACT standard. PennFuture submitted comments specific to the case-by-case RACT determinations for two located in the Philadelphia area, namely for Kurz-

Hastings and GATX Terminals Corporation. EPA summarizes those comments and provides responses in the final rule pertaining to those sources.

B. Comment: PennFuture comments that when EPA reviewed Pennsylvania's RACT program, it noted that Pennsylvania coal-fired boilers with a rated heat input of equal to or greater than 100 million Btu per hour ''are some of the largest NO_X emitting sources in the Commonwealth and in the Northeast United States'' [63 FR 13789, 13791 (1998)] and as such should have numeric emission limitations imposed as RACT whether or not they install presumptive RACT (under 25 Pa.Code 129.93) to guarantee that sources would achieve quantifiable emissions reductions under the RACT program. PennFuture goes on to comment that because EPA has not conducted and documented a technical review of Pennsylvania case-by case RACT submissions, EPA has not demonstrated that these large boilers are subject to ''numeric emission limitations'' under RACT. EPA must conduct a thorough RACT evaluation or review for each such source, and must document the application of numeric emission limits and quantifiable reductions for each coal-fired boiler with a rated heat input of over 100 million Btu per hour.

Response: Circumstances may exist wherein a state could justify otherwise, however, in general, EPA agrees with PennFuture that coal-fired boilers with a rated heat input of equal to or greater than 100 million Btu per hour should have numeric emission limitations imposed as RACT whether or not they install presumptive RACT (under 25 Pa.Code 129.93).

As provided in the response found in II. A, EPA does not agree that it must conduct its own technical analysis of each of the case-by-case RACT determinations submitted for each RACT source in order to document that its RACT requirements include numeric emission limitations. That determination can be made by EPA when it reviews the plan approval, consent order, or permit issued to such a source as submitted by the Commonwealth as SIP revision. PennFuture's comment did not point to a specific instance where a RACT plan approval, consent order or permit imposing RACT on a coal-fired boiler with a rated heat input of equal to or greater than 100 million Btu per hour did, in fact, lack a numerical emission limitation(s). Nonetheless, pursuant to PennFuture's comment, EPA has re-examined all of the case-by-case RACT SIP submissions made by the Commonwealth for such sources located in the Philadelphia area. That re-examination, combined with information provided by the Commonwealth, indicates that each case-by-case RACT plan approval, consent order and/or permit for each coal-fired boiler with a rated heat input of equal to or greater than 100 million Btu per hour includes a numeric emission limitation. A listing of each source, its plan approval, consent order and/or permit number and its numerical emission limitation has been placed in the Administrative Records for the case-by-case RACT rulemakings for the Philadelphia area.

C. Comment: PennFuture asserts that the Commonwealth has not adopted and submitted category RACT rules for all VOC source categories for which federal control technique guidelines (CTGs) have been issued. The commenter refers to Appendix 1 of the Technical Support Document (dated May 14, 2001), prepared by EPA in support of its proposed rule to redesignate the Pittsburgh-Beaver Valley Ozone Nonattainment Area (66 FR 29270), to assert that EPA has failed to require the Commonwealth to submit VOC RACT rules for certain categories of sources. PennFuture specifically names source categories such as equipment leaks from natural gas/gas processing plants, coke oven batteries, iron and steel foundries, and publically owned treatment works and asserts that the Commonwealth has neglected a statutory requirement to adopt category RACT regulations for these and 14 other unnamed VOC source categories. PennFuture contends that the case-by-case approach for establishing and approving RACT is unacceptable under a statutory scheme that specifically requires category-wide RACT regulations for sources covered by CTGs. PennFuture's comment cites to *Wall* v. *EPA,* 2001 FED App. 0318P (6th Cir.)(Cincinnati ozone redesignation and RACT). EPA should reject any proposed case-by-case VOC RACT for a source in a category for which there is a CTG but no Pennsylvania RACT regulation.

Response: EPA has not issued CTGs for coke oven batteries, iron and steel foundries and publically owned treatment works. The Appendix 1, referred to by the commenter, lists CTG covered categories as well as source categories taken from two STAPPA/ALAPCO documents entitled, ''Meeting the 15-Percent Rate-of-Progress Requirement Under the Clean Air Act—A Menu of Options'' (September 1993) and ''Controlling Nitrogen Oxides Under the Clean Air Act—A Menu of Options'' (July 1994). The categories referenced by PennFuture are not VOC categories for which EPA has issued CTGs, but were included in Appendix A as examples of some of the types of sources that could be subject to Pennsylvania's generic RACT regulations.

The Commonwealth is under no statutory obligation to adopt RACT rules for source *categories* for which EPA has not issued a CTG. In fact, CTGs do not exist for all but one of the categories to which the commenter explicitly refers.

The Act requires that states adopt regulations to impose RACT for ''major sources of VOC,'' located within those areas of a state where RACT applies under Part D of the Act [182(b)(2)(C)]. This is referred to as the non-CTG VOC RACT requirement. Moreover, EPA disagrees that there is a statutory mandate that a state adopt a source category RACT regulation even for a source category where EPA has issued a CTG. There are two statutory provisions that address RACT for sources covered by a CTG. One provides that states must adopt RACT for ''any category of VOC sources'' covered by a CTG issued prior to November 15, 1990 [182(b)(2)(A)]. The other provides that states must adopt VOC RACT for all ''VOC sources'' covered by a CTG issued after November 15, 1990 [182(b)(2)(B)]. EPA has long interpreted the statutory RACT requirement to be met either by adoption of category-specific rules or by source-specific rules for each source within a category. When initially established, RACT was clearly defined as a case-by-case determination, but EPA provided CTG's to simplify the process for states such that they would not be required to adopt hundreds or thousands of individual rules. See Strelow Memorandum dated December 9, 1976 and 44 FR 53761, September 17, 1979. EPA does not believe that Congress' use of ''source category'' in one provision of section 182(b)(2) was intended to preclude the adoption of source-specific rules.

Thus, where CTG-subject sources are located within those areas of a state where RACT applies under Part D of the Act, the state is obligated to impose RACT for the same universe of sources covered by the CTG. However, that obligation is not required to be met by the adoption and submittal of a source category RACT rule. A state may, instead, opt to impose RACT for such sources in permits, plan approvals, consent orders or in any other state enforceable document and submit those documents to EPA for approval as source-specific SIP revisions. This option has been exercised by many states, and happens most commonly when only a few CTG-subject sources

are located in the state. The source-specific approach is generally employed to avoid what can be a lengthy and resource-intensive state rule adoption process for only a few sources that may have different needs and considerations that must be taken into account. EPA disagrees with the commenter's citing to *Wall* v. *EPA,* 2001 FED App. 0318P (6th Cir. Sept.11, 2001) (Cincinnati ozone redesignation and RACT) as indicative of his contentions regarding states' obligations to adopt category-wide RACT regulations for sources covered by CTGs. The opinion rendered in the cited case neither requires states to adopt category-wide RACT regulations for sources covered by CTGs, nor does it preclude states from exercising their option to impose RACT for CTG-subject sources, on a case-by-case basis. Rather, it speaks only to the Act's requirement that states must implement RACT for CTG-subject sources in ozone nonattainment areas; and not to any specific regulatory construct by which they must do so. Pennsylvania has implemented RACT for all CTG-subject sources in the Philadelphia area, and, EPA has approved all such RACT determinations as revisions to the Pennsylvania SIP. As stated earlier, there is one source category explicitly included in PennFuture's comment for which EPA has issued a CTG, namely natural gas/gas processing plants. The Commonwealth made a negative declaration to EPA on April 13, 1993, stating that as of that date there were no applicable sources in this category. Therefore, the Commonwealth did not adopt a category RACT regulation for natural gas/gas processing plants.

D. Comment: PennFuture cites EPA correspondence [letter from Marcia Spink, EPA, to James Salvaggio, DEP, December 15, 1993] to the Commonwealth which states that establishing any dollar figure in RACT guidance will not provide for the ''automatic'' selection or rejection of a control technology or emission limitation as RACT for a source or source category. With regard to the Pennsylvania DEP's intent to finalize a NO_X RACT Guidance Document for implementation of its NO_X RACT regulation, EPA's 1993 letter stated that the document could improperly be used to establish ''bright line'' or ''cook-book'' approaches, particularly for a regulation applicable to many source categories and suggested that if the guidance document must include dollar figures/ton, it provide approximate ranges by source category. PennFuture comments that DEP issued its ''Guidance Document on Reasonably Available Control Technology for Sources of NO_X Emissions,'' March 11, 1994, and on pp. 8–9 states that the acceptable threshold is $1500 per ton, and that this figure applies to ''all source categories.'' PennFuture notes that EPA later objected to the $1500 per ton methodology as ''not generically acceptable to EPA'' [letter from Thomas Maslany, EPA, to James Salvaggio, DEP, June 24, 1997] and further stated in a **Federal Register** document that a ''dollar per ton threshold'' is ''inconsistent with the definition of RACT'' [62 FR 43134, 37–38 (1997)].

PennFuture comments that EPA is proposing to approve RACT determinations based on a cost per ton method that EPA had previously rejected, and according to its own clearly expressed standard, EPA must not approve RACT determinations by Pennsylvania DEP that apply this $1500 per ton threshold. PennFuture asserts EPA must reject all Pennsylvania RACT determinations applying the standard of $1500 per ton, or any other ''bright line'' approach, as failing to follow EPA procedures established for Pennsylvania RACT.

Response: EPA still takes the position that a single cost per ton dollar figure may not, in and of itself, form the basis for rejecting a control technology, equipment standard, or work practice standard as RACT. The Technical Support Document prepared by EPA in support of its March 23, 1998 rulemaking [63 FR 13789] clearly indicates that the Commonwealth's document, ''Guidance Document on Reasonably Available Control Technology for Sources of NO_X Emissions.'' March 11, 1994, had not been included as part of the SIP submission of the Commonwealth's generic regulation and, therefore, had not been approved by EPA. EPA further notes that the Administrative Record of the March 23, 1998 rulemaking [63 FR 13789], in addition to the correspondence cited by PennFuture, also includes correspondence from DEP to EPA [letter from James Salvaggio, DEP to David Arnold, EPA, September 10, 1997] stating that DEP's RACT guidance document does not establish a maximum dollar per ton for determining the cost effectiveness for RACT determinations and notes that the DEP's $1500 per ton cost effectiveness is a target value and not an absolute maximum. For example, in its analyses of the cost effectiveness of RACT control options submitted by DEP as part of the case-by-case SIP revision for Peoples Natural Gas (PNG) Valley Compressor Station's turbo charged lean burn IC engine (see the Administrative Record for 66 FR 43492), the Commonwealth included DEP interoffice memoranda (Thomas Joseph to Krishnan Ramamurthy, July 14, 1994 and Krishnan Ramamurthy to Thomas McGinley, Babu Patel, Ronald Davis, Richard Maxwell, and Devendra Verma, July 15, 1994) which spoke directly to the $1500/ton dollar figure as being a guideline and not an upper limit. These memoranda explain that although PNG initially proposed intermediate original equipment manufacturer (OEM) combustion controls which would have reduced NO_X emissions from 254.7 tons per year to 115 tons per year (by 55 %) at a cost of $1355 per ton reduced, DEP required the installation of an OEM lean combustion modification that reduced NO_X emissions from 254.7 tons per year to 76 tons per year (by 69 %) at a cost of $1684 per ton reduced. The DEP's July 15, 1994 interoffice memorandum says of the PNG RACT determination which exceeded the cost effectiveness screening level of $1500 per ton ''Tom's (Joseph) insistence for the next more stringent level of control than the company's chosen level in the case of PNG was consistent with EPA Region III's sentiment that establishing any dollar figure in RACT guidance will not provide for an 'automatic' rejection of a control technology as RACT for a source.''

In no instance, has EPA proposed to approve a RACT determination submitted by the Commonwealth which was based solely on a conclusion that controls that cost more than $1500/ton were not required as RACT. As explained in the response provided in section II. A. of this document, EPA conducts its review of the entire case-by-case RACT SIP submittal including the source's proposed RACT plan and analyses, Pennsylvania's analyses and the RACT plan approval, consent order or permit itself to insure that the requirements of the SIP-approved generic RACT have been followed. These analyses not only evaluate and consider the costs of potential control options, but also evaluate their technological feasibility.

E. Comment: PennFuture comments that any emission reduction credits (ERCs) earned by sources subject to RACT must be surplus to all applicable state and federal requirements. Under Pennsylvania law, ERCs must be surplus, permanent, quantified, and Federally enforceable. 25 Pa.Code 127.207(1). As to the requirement that ERCs be surplus, the Pennsylvania Code states: ERCs shall be included in the current emission inventory, and may not be required by or be used to meet past or current SIP, attainment

demonstration, RFP, emission limitation or compliance plans. Emission reductions necessary to meet NSPS, LAER, RACT, Best Available Technology, BACT and permit or plan approval emissions limitations or another emissions limitation required by the Clean Air Act or the [Air Pollution Control Act] may not be used to generate ERCs. 25 Pa.Code 127.207(1)(i). To be creditable, ERCs must surpass not only RACT requirements but a host of other possible sources of emission limits. PennFuture comments that some of the RACT evaluations at issue in the current EPA notices purport to establish RACT as a baseline for future ERCs. PennFuture does acknowledge that EPA notes in its boilerplate for the notices, that Pennsylvania and EPA have established a series of NO_X-reducing rules, including the recent Chapter 145 rule, to reduce NO_X at large utility and industrial sources. See, for example, 66 FR 42415, 16–17 (August 13, 2001). Because any ERCs must be surplus to the most stringent limitation applicable under state or federal law as described in the Pennsylvania Code provision set forth above, DEP and EPA must not approve ERCs unless they surpass all such limitations in addition to any limits set by RACT.

Response: EPA agrees with this comment by PennFuture. The approval of a case-by-case RACT determination, in and of itself, does not establish the baseline from which further emission reductions may be calculated and assumed creditable under the Commonwealth's SIP-approved NSR and ERC program. Moreover, EPA's review of the Pennsylvania DEP's implementation of its approved SIP-approved NSR and ERC program indicates that the Commonwealth calculates and credits ERCs in accordance with the SIP-approved criteria for doing so as outlined in PennFuture's comment. No source for which EPA is approving a case-by-case RACT determination should assume that its RACT approval alone automatically establishes the baseline against which it may calculate creditable ERCs.

F. Comment: PennFuture comments that as in the case with Pennsylvania Power—Newcastle, EPA should compare RACT proposals to applicable acid rain program emission limits and control strategies. PennFuture contends that EPA previously disapproved a RACT proposal for the Pennsylvania Power—Newcastle plant [62 FR 43959 (1997); 63 FR 23668 (1998)] and that EPA did so on the basis that the acid rain program requires more stringent emission limits. PennFuture asserts that while EPA had originally proposed to approve this proposal, an analysis of comparable boilers and, especially, a comparison to Phase II emission limits under the acid rain program led EPA to conclude that the RACT proposal emission limits were too lenient. [62 FR at 43961]. Therefore, PennFuture contends that for sources subject to the acid rain program, EPA should consider emissions and control strategies for compliance with acid rain emission limits when evaluating proposals for compliance with RACT.

Response: Title IV of the Act, addressing the acid rain program, contains NO_X emission requirements for utilities which must be met in *addition to* any RACT requirements (see NO_X Supplement to the General Preamble at 57 FR 55625, November 25, 1992). The Act provides for a number of control programs that may affect similar sources. For example, new sources may be subject to new source performance standards (NSPS), best available control technology (BACT), and lowest achievable emission rate (LAER). Other controls, under such programs as the acid rain program or the hazardous air pollutant program may also apply to sources. However, the applicability of these other requirements, which are often more stringent than RACT, do not establish what requirements must apply under the RACT program. While these programs may provide information as to the technical and economic feasibility of reduction programs for RACT, there is no presumption that acid rain controls should be mandated as RACT.

EPA stated in the final disapproval of the NO_X RACT determination for PPNC [63 FR at 23669], that the discussion concerning average emission rates for boilers with respect to the acid rain program requirements were included in order to provide a context for EPA's proposed disapproval. EPA made clear in its August 18, 1997 proposed disapproval of Pennsylvania Powers'—Newcastle (PPNC) RACT determination, that the basis for disapproval was a comparison between PPNC's boilers and other similar combustion units, not acid rain limits. In fact, EPA stated in the August 18, 1997 proposed disapproval that ''Without additional knowledge or information, it would be erroneous and premature to conclude that the limits in the acid rain permit are RACT.'' [62 FR at 43961]. EPA clearly stated in the final disapproval for PPNC that it did not use acid rain permit limits, or Pennsylvania's participation in any other NO_X control program, to determine PPNC RACT approvability [63 FR at 23670]. Nor has EPA intended to use participation in NO_X control programs including acid rain, in determining RACT for PPNC or any other subject sources. EPA also stated that the April 30, 1998, PPNC disapproval was based on the absence of pertinent information regarding a computerized combustion optimization system through an enforceable permit, not comparison of acid rain permit limits.

III. Final Action

EPA is approving the SIP revisions to the Pennsylvania SIP submitted by PADEP to establish and require VOC and/or NO_X RACT for seven major of sources located in the Philadelphia area. EPA is approving these SIP submittals because PADEP established and imposed these RACT requirements in accordance with the criteria set forth in the SIP-approved RACT regulations applicable to these sources. The PADEP has also imposed record keeping, monitoring, and/or testing requirements sufficient to determine compliance with the applicable RACT determinations.

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 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 State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 **Note**) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability establishing source-specific requirements for seven named sources.

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 31, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving VOC and/or NO_X RACT for seven sources located in the Philadelphia area may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: October 15, 2001.

James W. Newsom,

Acting Regional Administrator, Region III.

40 CFR Part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c)(179) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(179) Revisions to the Pennsylvania Regulations, Chapter 129 pertaining to VOC and/or NO_X RACT for seven sources located in the Philadelphia-Wilmington-Trenton ozone nonattainment area submitted by the Pennsylvania Department of Environmental Protection on August 1, 1995, February 2, 1999, July 27, 2001, and August 8, 2001.

(i) Incorporation by reference.

(A) Letters submitted by the Pennsylvania Department of Environmental Protection transmitting source-specific VOC and/or NO_X RACT determinations, in the form of plan approvals, operating permits, or compliance permits on the following dates: August 1, 1995, February 2, 1999, July 27, 2001, and August 8, 2001.

(B) Operating permits (OP), or Compliance Permits (CP) issued to the following sources:

(*1*) PECO Energy Company, Cromby Generating Station, OP–15–0019, effective April 28, 1995.

(*2*) Waste Resource Energy, Inc. (Operator); Shawmut Bank, Conn. National Assoc. (Owner); Delaware County Resource Recovery Facility, OP–23–0004, effective November 16, 1995.

(*3*) G-Seven, Ltd., OP–46–0078, effective April 20, 1999.

(*4*) Leonard Kunkin Associates, OP–09–0073, effective June 25, 2001.

(*5*) Kimberly-Clark Corporation, OP–23–0014A, effective June 24, 1998 as revised August 1, 2001.

(*6*) Sunoco, Inc. (R&M); Marcus Hook Plant; CP–23–0001, effective June 8, 1995 as revised August 2, 2001, except for the expiration date.

(*7*) Waste Management Disposal Services of Pennsylvania, Inc. (GROWS Landfill), Operating Permit OP–09–0007, effective December 19, 1997 as revised July 17, 2001.

(ii) Additional Materials—Other materials submitted by the Commonwealth of Pennsylvania in support of and pertaining to the RACT determinations for the sources listed in paragraph (c)(179)(i)(B) of this section.

[FR Doc. 01–26762 Filed 10–29–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA–4184; FRL–7089–8]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; VOC and NO_X RACT Determinations for Three Individual Sources in the Philadelphia-Wilmington-Trenton Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve revisions to the Commonwealth of Pennsylvania's State Implementation Plan (SIP). The revisions were submitted by the Pennsylvania Department of Environmental Protection (PADEP) to establish and require reasonably available control technology (RACT) for three major sources of volatile organic compounds (VOC) and/or nitrogen oxides (NO_X). These sources are located in the Philadelphia-Wilmington-Trenton ozone

nonattainment area (the Philadelphia area). EPA is approving these revisions to establish RACT requirements in the SIP in accordance with the Clean Air Act (CAA or the Act).

EFFECTIVE DATE: This final rule is effective on November 14, 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; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Marcia Spink (215) 814–2104 or by e-mail at *spink.marcia@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On April 20, 1999, June 28, 2000, and August 8, 2001, PADEP submitted revisions to the Pennsylvania SIP which establish and impose RACT for several sources of VOC and/or NO_X. This rulemaking pertains to three of those sources. These three sources are all located in the Philadelphia area and include: Exelon Generation Company—Richmond Generating Station; FPL Energy MH 50, L.P.; and Waste Management Disposal Services of Pennsylvania, Inc. (Pottstown Landfill).

On August 31, 2001, EPA published a direct final rule (66 FR 45938) and a companion notice of proposed rulemaking (66 FR 45954) to approve these SIP revisions. On October 1, 2001, we received adverse comments on our direct final rule from the Citizens for Pennsylvania's Future (PennFuture). On October 11, 2001, we published a timely withdrawal in the **Federal Register** informing the public that the direct final rule did not take effect. We indicated in our August 31, 2001 direct final rulemaking that if we received adverse comments, EPA would address all public comments in a subsequent final rule based on the proposed rule (66 FR 45954). This is that subsequent final rule. A description of the RACT determination(s) made for each source was provided in the August 31, 2001 direct final rule and will not be restated here. A summary of the comments submitted by PennFuture germane to this final rulemaking and EPA's responses are provided in Section II of this document.

II. Public Comments and Responses

On October 1, 2001, PennFuture submitted adverse comments on the proposed rule published by EPA in the **Federal Register** on August 31, 2001 to approve case-by-case RACT SIP submissions from the Commonwealth for NO_X and or VOC sources located in the Philadelphia area. A summary of those comments and EPA's responses are provided below.

A. Comment: PennFuture comments that EPA has conducted no independent technical review, and has prepared no technical support document to survey potential control technologies, determine the capital and operating costs of different options, and rank these options in total and marginal cost per ton of NO_X and VOC controlled. In citing the definition of the term ''RACT,'' and the Strelow Memorandum [Roger Strelow, Assistant Administrator for Air and Waste Management, EPA, December 9, 1976, cited in *Michigan* v. *Thomas,* 805 F.2d 176, 180 (6th Cir. 1986) and at 62 FR 43134, 43136 (1997)], PennFuture appears to comment that in every situation, RACT must include an emission rate. PennFuture asserts that EPA should conduct its own RACT evaluation for each source, or at a minimum document a step-by-step review demonstrating the adequacy of state evaluations, to ensure that appropriate control technology is applied. The commenter also believes that EPA's failure to conduct its own independent review of control technologies has resulted in our proposing to approve some RACT determinations that fail to meet the terms of EPA's own RACT standard.

Response: On March 23, 1998 (63 FR 13789), EPA granted conditional limited approval of Pennsylvania's generic RACT regulations, 25 PA Code Chapters 121 and 129, thereby approving the definitions, provisions and procedures contained within those regulations under which the Commonwealth would require and impose RACT. Subsection 129.91, *Control of major sources of NO_X and VOCs,* requires subject facilities to submit a RACT plan proposal to both the Pennsylvania Department of Environmental Protection (DEP) and to EPA Region III by July 15, 1994 in accordance with subsection 129.92, entitled, *RACT proposal requirements.* Under subsection 129.92, that proposal is to include, among other information: (1) A list each of subject source at the facility; (2) The size or capacity of each affected source, and the types of fuel combusted, and the types and amounts of materials processed or produced at each source; (3) A physical description of each source and its operating characteristics; (4) Estimates of potential and actual emissions from each affected source with supporting documentation; (5) A RACT analysis which meets the requirements of subsection 129.92 (b), including technical and economic support documentation for each affected source; (6) A schedule for implementation as expeditiously as practicable but not later than May 15, 1995; (7) The testing, monitoring, recordkeeping and reporting procedures proposed to demonstrate compliance with RACT; and (8) any additional information requested by the DEP necessary to evaluate the RACT proposal. Under subsection 129.91, the DEP will approve, deny or modify each RACT proposal, and submit each RACT determination to EPA for approval as a SIP revision.

The conditional nature of EPA's March 23, 1998 conditional limited approval did not impose any conditions pertaining to the regulation's procedures for the submittal of RACT plans and analyses by subject sources and approval of case-by case RACT determinations by the DEP. Rather, EPA stated that ''...RACT rules *may not merely be procedural rules* (emphasis added) that require the source and the State to later agree to the appropriate level of control; rather the rules must identify the appropriate level of control for source categories or individual sources.''

On May 3, 2001 (66 FR 22123), EPA published a rulemaking determining that Pennsylvania had satisfied the conditions imposed in its conditional limited approval. In that rulemaking, EPA removed the conditional status of its approval of the Commonwealth's generic VOC and NO_X RACT regulations on a statewide basis. EPA received no public comments on its action and that final rule removing the conditional status of Pennsylvania's VOC and NO_X RACT regulations became effective on June 18, 2001. As of that time, Pennsylvania's generic VOC and NO_X RACT regulations retained a limited approval status. On September 6, 2001 (66 FR 46571), EPA proposed to remove the limited nature of its approval of Pennsylvania's generic RACT regulation in the Philadelphia area. EPA received no public comments on that proposal. Final action converting the limited approval to full approval shall occur once EPA has completed rulemaking to approve either (1) the case-by-case RACT proposals for all sources subject to the RACT requirements currently known in the Philadelphia area *or* (2) for a sufficient number of sources such that the emissions from any remaining

subject sources represent a de minimis level of emissions as defined in the March 23, 1998 rulemaking (63 FR 13789).

EPA agrees that it has an obligation to review the case-by-case RACT plan approvals and/or permits submitted as individual SIP revisions by Commonwealth to verify and determine if they are consistent with the RACT requirements of the Act and any relevant EPA guidance. EPA does not agree, however, that this obligation to review the case-by-case RACT determinations submitted by Pennsylvania necessarily extends to our performing our own RACT analyses, independent of the sources' RACT plans/analyses (included as part of the case-by case RACT SIP revisions) or the Commonwealth's analyses. EPA first reviews this submission to ensure that the source and the Commonwealth followed the SIP-approved generic rule when applying for and imposing RACT for a specific source. Then EPA performs a thorough review of the technical and economic analyses conducted by the source and the state. If EPA believes additional information may further support or would undercut the RACT analyses submitted by the state, then EPA may add additional EPA-generated analyses to the record.

While RACT, as defined for an individual source or source category, often does specify an emission rate, such is not always the case. EPA has issued Control Technique Guidelines (CTGs) which states are to use as guidance in development of their RACT determinations/rules for certain sources or source categories. Not every CTG issued by EPA includes an emission rate. There are several examples of CTGs issued by EPA wherein equipment standards and/or work practice standards alone are provided as RACT guidance for all or part of the processes covered. Such examples include the CTGs issued for Bulk gasoline plants, Gasoline service stations—Stage I, Petroleum Storage in Fixed-roof tanks, Petroleum refinery processes, Solvent metal cleaning, Pharmaceutical products, External Floating roof tanks and Synthetic Organic Chemical Manufacturing (SOCMI)/polymer manufacturing. (The publication numbers for these CTG documents may be found at *http://www.epa.gov/ttn/catc/dir1/ctg.txt).*

EPA disagrees with PennFuture's general comment that our failure to conduct our own independent review of control technologies for every case-by-case RACT determination conducted by the Commonwealth has resulted in our proposing to approve some RACT determinations that fail to meet the terms of our own RACT standard. PennFuture submitted comments specific to the case-by-case RACT determinations for two located in the Philadelphia area, namely for Kurz-Hastings and GATX Terminals Corporation. EPA summarizes those comments and provides responses in the final rule pertaining to those sources.

B. Comment: PennFuture comments that when EPA reviewed Pennsylvania's RACT program, it noted that Pennsylvania coal-fired boilers with a rated heat input of equal to or greater than 100 million Btu per hour ''are some of the largest NO_X emitting sources in the Commonwealth and in the Northeast United States' [63 FR 13789, 13791 (1998)] and as such should have numeric emission limitations imposed as RACT whether or not they install presumptive RACT (under 25 Pa.Code 129.93) to guarantee that sources would achieve quantifiable emissions reductions under the RACT program. PennFuture goes on to comment that because EPA has not conducted and documented a technical review of Pennsylvania case-by case RACT submissions, EPA has not demonstrated that these large boilers are subject to ''numeric emission limitations'' under RACT. EPA must conduct a thorough RACT evaluation or review for each such source, and must document the application of numeric emission limits and quantifiable reductions for each coal-fired boiler with a rated heat input of over 100 million Btu per hour.

Response: Circumstances may exist wherein a state could justify otherwise, however, in general, EPA agrees with PennFuture that coal-fired boilers with a rated heat input of equal to or greater than 100 million Btu per hour should have numeric emission limitations imposed as RACT whether or not they install presumptive RACT (under 25 Pa.Code 129.93).

As provided in the response found in II. A, EPA does not agree that it must conduct its own technical analysis of each of the case-by-case RACT determinations submitted for each RACT source in order to document that its RACT requirements include numeric emission limitations. That determination can be made by EPA when it reviews the plan approval, consent order, or permit issued to such a source as submitted by the Commonwealth as SIP revision. PennFuture's comment did not point to a specific instance where a RACT plan approval, consent order or permit imposing RACT on a coal-fired boiler with a rated heat input of equal to or greater than 100 million Btu per hour did, in fact, lack a numerical emission limitation(s). Nonetheless, pursuant to PennFuture's comment, EPA has re-examined all of the case-by-case RACT SIP submissions made by the Commonwealth for such sources located in the Philadelphia area. That re-examination, combined with information provided by the Commonwealth, indicates that each case-by-case RACT plan approval, consent order and/or permit for each coal-fired boiler with a rated heat input of equal to or greater than 100 million Btu per hour includes a numeric emission limitation. A listing of each source, its plan approval, consent order and/or permit number and its numerical emission limitation has been placed in the Administrative Records for the case-by-case RACT rulemakings for the Philadelphia area.

C. Comment: PennFuture asserts that the Commonwealth has not adopted and submitted category RACT rules for all VOC source categories for which federal control technique guidelines (CTGs) have been issued. The commenter refers to Appendix 1 of the Technical Support Document (dated May 14, 2001), prepared by EPA in support of its proposed rule to redesignate the Pittsburgh-Beaver Valley Ozone Nonattainment Area (66 FR 29270), to assert that EPA has failed to require the Commonwealth to submit VOC RACT rules for certain categories of sources. PennFuture specifically names source categories such as equipment leaks from natural gas/gas processing plants, coke oven batteries, iron and steel foundries, and publically owned treatment works and asserts that the Commonwealth has neglected a statutory requirement to adopt category RACT regulations for these and 14 other unnamed VOC source categories. PennFuture contends that the case-by-case approach for establishing and approving RACT is unacceptable under a statutory scheme that specifically requires category-wide RACT regulations for sources covered by CTGs. PennFuture's comment cites to *Wall* v. *EPA,* 2001 FED App. 0318P (6th Cir.)(Cincinnati ozone redesignation and RACT). EPA should reject any proposed case-by-case VOC RACT for a source in a category for which there is a CTG but no Pennsylvania RACT regulation.

Response: EPA has not issued CTGs for coke oven batteries, iron and steel foundries and publically owned treatment works. The Appendix 1, referred to by the commenter, lists CTG covered categories as well as source categories taken from two STAPPA/ALAPCO documents entitled, ''Meeting the 15-Percent Rate-of-Progress

Requirement Under the Clean Air Act—A Menu of Options' (September 1993) and ''Controlling Nitrogen Oxides Under the Clean Air Act—A Menu of Options'' (July 1994). The categories referenced by PennFuture are not VOC categories for which EPA has issued CTGs, but were included in Appendix A as examples of some of the types of sources that could be subject to Pennsylvania's generic RACT regulations.

The Commonwealth is under no statutory obligation to adopt RACT rules for source *categories* for which EPA has not issued a CTG. In fact, CTGs do not exist for all but one of the categories to which the commenter explicitly refers.

The Act requires that states adopt regulations to impose RACT for ''major sources of VOC,'' located within those areas of a state where RACT applies under Part D of the Act [182(b)(2)(C)]. This is referred to as the non-CTG VOC RACT requirement. Moreover, EPA disagrees that there is a statutory mandate that a state adopt a source category RACT regulation even for a source category where EPA has issued a CTG. There are two statutory provisions that address RACT for sources covered by a CTG. One provides that states must adopt RACT for ''any category of VOC sources'' covered by a CTG issued prior to November 15, 1990 [182(b)(2)(A)]. The other provides that states must adopt VOC RACT for all ''VOC sources'' covered by a CTG issued after November 15, 1990 [182(b)(2)(B)]. EPA has long interpreted the statutory RACT requirement to be met either by adoption of category-specific rules or by source-specific rules for each source within a category. When initially established, RACT was clearly defined as a case-by-case determination, but EPA provided CTG's to simplify the process for states such that they would not be required to adopt hundreds or thousands of individual rules. See Strelow Memorandum dated December 9, 1976 and 44 FR 53761, September 17, 1979. EPA does not believe that Congress' use of ''source category'' in one provision of section 182(b)(2) was intended to preclude the adoption of source-specific rules. Thus, where CTG-subject sources are located within those areas of a state where RACT applies under Part D of the Act, the state is obligated to impose RACT for the same universe of sources covered by the CTG. However, that obligation is not required to be met by the adoption and submittal of a source category RACT rule. A state may, instead, opt to impose RACT for such sources in permits, plan approvals, consent orders or in any other state enforceable document and submit those documents to EPA for approval as source-specific SIP revisions. This option has been exercised by many states, and happens most commonly when only a few CTG-subject sources are located in the state. The source-specific approach is generally employed to avoid what can be a lengthy and resource-intensive state rule adoption process for only a few sources that may have different needs and considerations that must be taken into account.

EPA disagrees with the commenter's citing to *Wall* v. *EPA,* 2001 FED App. 0318P (6th Cir. Sept. 11, 2001) (Cincinnati ozone redesignation and RACT) as indicative of his contentions regarding states' obligations to adopt category-wide RACT regulations for sources covered by CTGs. The opinion rendered in the cited case neither requires states to adopt category-wide RACT regulations for sources covered by CTGs, nor does it preclude states from exercising their option to impose RACT for CTG-subject sources, on a case-by-case basis. Rather, it speaks only to the Act's requirement that states must implement RACT for CTG-subject sources in ozone nonattainment areas; and not to any specific regulatory construct by which they must do so. Pennsylvania has implemented RACT for all CTG-subject sources in the Philadelphia area, and, EPA has approved all such RACT determinations as revisions to the Pennsylvania SIP.

As stated earlier, there is one source category explicitly included in PennFuture's comment for which EPA has issued a CTG, namely natural gas/gas processing plants. The Commonwealth made a negative declaration to EPA on April 13, 1993, stating that as of that date there were no applicable sources in this category. Therefore, the Commonwealth did not adopt a category RACT regulation for natural gas/gas processing plants.

D. Comment: PennFuture cites EPA correspondence [letter from Marcia Spink, EPA, to James Salvaggio, DEP, December 15, 1993] to the Commonwealth which states that establishing any dollar figure in RACT guidance will not provide for the ''automatic'' selection or rejection of a control technology or emission limitation as RACT for a source or source category. With regard to the Pennsylvania DEP's intent to finalize a NO_X RACT Guidance Document for implementation of its NO_X RACT regulation, EPA's 1993 letter stated that the document could improperly be used to establish ''bright line'' or ''cook-book'' approaches, particularly for a regulation applicable to many source categories and suggested that if the guidance document must include dollar figures/ton, it provide approximate ranges by source category. PennFuture comments that DEP issued its ''Guidance Document on Reasonably Available Control Technology for Sources of NO_X Emissions,'' March 11, 1994, and on pp. 8–9 states that the acceptable threshold is $1500 per ton, and that this figure applies to ''all source categories.'' PennFuture notes that EPA later objected to the $1500 per ton methodology as ''not generically acceptable to EPA'' [letter from Thomas Maslany, EPA, to James Salvaggio, DEP, June 24, 1997] and further stated in a **Federal Register** notice that a ''dollar per ton threshold'' is ''inconsistent with the definition of RACT'' [62 FR 43134, 37–38 (1997)].

PennFuture comments that EPA is proposing to approve RACT determinations based on a cost per ton method that EPA had previously rejected, and according to its own clearly expressed standard, EPA must not approve RACT determinations by Pennsylvania DEP that apply this $1500 per ton threshold. PennFuture asserts EPA must reject all Pennsylvania RACT determinations applying the standard of $1500 per ton, or any other ''bright line'' approach, as failing to follow EPA procedures established for Pennsylvania RACT.

Response: EPA still takes the position that a single cost per ton dollar figure may not, in and of itself, form the basis for rejecting a control technology, equipment standard, or work practice standard as RACT. The Technical Support Document prepared by EPA in support of its March 23, 1998 rulemaking [63 FR 13789] clearly indicates that the Commonwealth's document, ''Guidance Document on Reasonably Available Control Technology for Sources of NO_X Emissions.'' March 11, 1994, had not been included as part of the SIP submission of the Commonwealth's generic regulation and, therefore, had not been approved by EPA. EPA further notes that the Administrative Record of the March 23, 1998 rulemaking [63 FR 13789], in addition to the correspondence cited by PennFuture, also includes correspondence from DEP to EPA [letter from James Salvaggio, DEP to David Arnold, EPA, September 10, 1997] stating that DEP's RACT guidance document does not establish a maximum dollar per ton for determining the cost effectiveness for RACT determinations and notes that the DEP's $1500 per ton cost effectiveness is a target value and not an absolute maximum. For example, in its analyses of the cost effectiveness of RACT control

options submitted by DEP as part of the case-by-case SIP revision for Peoples Natural Gas (PNG) Valley Compressor Station's turbo charged lean burn IC engine (see the Administrative Record for 66 FR 43492), the Commonwealth included DEP interoffice memoranda (Thomas Joseph to Krishnan Ramamurthy, July 14, 1994 and Krishnan Ramamurthy to Thomas McGinley, Babu Patel, Ronald Davis, Richard Maxwell, and Devendra Verma, July 15, 1994) which spoke directly to the $1500/ton dollar figure as being a guideline and not an upper limit. These memoranda explain that although PNG initially proposed intermediate original equipment manufacturer (OEM) combustion controls which would have reduced NO_X emissions from 254.7 tons per year to 115 tons per year (by 55%) at a cost of $1355 per ton reduced, DEP required the installation of an OEM lean combustion modification that reduced NO_X emissions from 254.7 tons per year to 76 tons per year (by 69 %) at a cost of $1684 per ton reduced. The DEP's July 15, 1994 interoffice memorandum says of the PNG RACT determination which exceeded the cost effectiveness screening level of $1500 per ton, ''* * * Tom's (Joseph) insistence for the next more stringent level of control than the company's chosen level in the case of PNG was consistent with EPA Region III's sentiment that establishing any dollar figure in RACT guidance will not provide for an ''automatic'' rejection of a control technology as RACT for a source.''

In no instance, has EPA proposed to approve a RACT determination submitted by the Commonwealth which was based solely on a conclusion that controls that cost more than $1500/ton were not required as RACT. As explained in the response provided in section II. A. of this document, EPA conducts its review of the entire case-by-case RACT SIP submittal including the source's proposed RACT plan and analyses, Pennsylvania's analyses and the RACT plan approval, consent order or permit itself to insure that the requirements of the SIP-approved generic RACT have been followed. These analyses not only evaluate and consider the costs of potential control options, but also evaluate their technological feasibility.

E. Comment: PennFuture comments that any emission reduction credits (ERCs) earned by sources subject to RACT must be surplus to all applicable state and federal requirements. Under Pennsylvania law, ERCs must be surplus, permanent, quantified, and Federally enforceable. 25 Pa.Code 127.207(1). As to the requirement that ERCs be surplus, the Pennsylvania Code states: ERCs shall be included in the current emission inventory, and may not be required by or be used to meet past or current SIP, attainment demonstration, RFP, emission limitation or compliance plans. Emission reductions necessary to meet NSPS, LAER, RACT, Best Available Technology, BACT and permit or plan approval emissions limitations or another emissions limitation required by the Clean Air Act or the [Air Pollution Control Act] may not be used to generate ERCs. 25 Pa.Code 127.207(1)(i). To be creditable, ERCs must surpass not only RACT requirements but a host of other possible sources of emission limits. PennFuture comments that some of the RACT evaluations at issue in the current EPA notices purport to establish RACT as a baseline for future ERCs. PennFuture does acknowledge that EPA notes in its boilerplate for the notices, that Pennsylvania and EPA have established a series of NO_X-reducing rules, including the recent Chapter 145 rule, to reduce NO_X at large utility and industrial sources. See, for example, 66 FR 42415, 16–17 (August 13, 2001). Because any ERCs must be surplus to the most stringent limitation applicable under state or federal law as described in the Pennsylvania Code provision set forth above, DEP and EPA must not approve ERCs unless they surpass all such limitations in addition to any limits set by RACT.

Response: EPA agrees with this comment by PennFuture. The approval of a case-by-case RACT determination, in and of itself, does not establish the baseline from which further emission reductions may be calculated and assumed creditable under the Commonwealth's SIP-approved NSR and ERC program. Moreover, EPA's review of the Pennsylvania DEP's implementation of its approved SIP-approved NSR and ERC program indicates that the Commonwealth calculates and credits ERCs in accordance with the SIP-approved criteria for doing so as outlined in PennFuture's comment. No source for which EPA is approving a case-by-case RACT determination should assume that its RACT approval alone automatically establishes the baseline against which it may calculate creditable ERCs.

F. Comment: PennFuture comments that as in the case with Pennsylvania Power—Newcastle, EPA should compare RACT proposals to applicable acid rain program emission limits and control strategies. PennFuture contends that EPA previously disapproved a RACT proposal for the Pennsylvania Power—Newcastle plant [62 FR 43959 (1997); 63 FR 23668 (1998)] and that EPA did so on the basis that the acid rain program requires more stringent emission limits. PennFuture asserts that while EPA had originally proposed to approve this proposal, an analysis of comparable boilers and, especially, a comparison to Phase II emission limits under the acid rain program led EPA to conclude that the RACT proposal emission limits were too lenient. [62 FR at 43961]. Therefore, PennFuture contends that for sources subject to the acid rain program, EPA should consider emissions and control strategies for compliance with acid rain emission limits when evaluating proposals for compliance with RACT.

Response: Title IV of the Act, addressing the acid rain program, contains NO_X emission requirements for utilities which must be met *in addition* to any RACT requirements (see NO_X Supplement to the General Preamble at 57 FR 55625, November 25, 1992). The Act provides for a number of control programs that may affect similar sources. For example, new sources may be subject to new source performance standards (NSPS), best available control technology (BACT), and lowest achievable emission rate (LAER). Other controls, under such programs as the acid rain program or the hazardous air pollutant program may also apply to sources. However, the applicability of these other requirements, which are often more stringent than RACT, do not establish what requirements must apply under the RACT program. While these programs may provide information as to the technical and economic feasibility of reduction programs for RACT, there is no presumption that acid rain controls should be mandated as RACT.

EPA stated in the final disapproval of the NO_X RACT determination for PPNC [63 FR at 23669], that the discussion concerning average emission rates for boilers with respect to the acid rain program requirements were included in order to provide a context for EPA's proposed disapproval. EPA made clear in its August 18, 1997 proposed disapproval of Pennsylvania Powers'—Newcastle (PPNC) RACT determination, that the basis for disapproval was a comparison between PPNC's boilers and other similar combustion units, not acid rain limits. In fact, EPA stated in the August 18, 1997 proposed disapproval that ''Without additional knowledge or information, it would be erroneous and premature to conclude that the limits in the acid rain permit are RACT.'' [62 FR at 43961]. EPA clearly stated in the final disapproval for PPNC that it did not use

acid rain permit limits, or Pennsylvania's participation in any other NO_X control program, to determine PPNC RACT approvability [63 FR at 23670]. Nor has EPA intended to use participation in NO_X control programs including acid rain, in determining RACT for PPNC or any other subject sources. EPA also stated that the April 30, 1998, PPNC disapproval was based on the absence of pertinent information regarding a computerized combustion optimization system through an enforceable permit, not comparison of acid rain permit limits.

III. Final Action

EPA is approving the SIP revisions to the Pennsylvania SIP submitted by PADEP to establish and require VOC and/or NO_X RACT for three major of sources located in the Philadelphia area. EPA is approving these RACT SIP submittals because the Philadelphia Air Management Services (AMS) and PADEP established and imposed these RACT requirements in accordance with the criteria set forth in the SIP-approved RACT regulations applicable to these sources. The AMS and PADEP have also imposed record-keeping, monitoring, and testing requirements on these sources sufficient to determine compliance with the applicable RACT determinations.

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 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 State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 **NOTE**) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability establishing source-specific requirements for three named sources.

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 31, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving VOC and/or NO_X RACT for three sources located in the Philadelphia area may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: October 15, 2001.

James W. Newsom,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c)(182) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(182) Revisions to the Pennsylvania Regulations, Chapter 129 pertaining to VOC and NO_X RACT, for three sources located in the Philadelphia area submitted by the Pennsylvania Department of Environmental Protection on April 20, 1999, June 28, 2000, and August 8, 2001.

(i) Incorporation by reference.

(A) Letters submitted by the Pennsylvania Department of

Environmental Protection transmitting source-specific VOC and/or NO_X RACT determinations, in the form of plan approvals and operating permits on April 20, 1999, June 28, 2000, and August 8, 2001.

(B) Plan approvals (PA), Operating permits (OP) issued to the following sources:

(*1*) Waste Management Disposal Services of Pennsylvania, Inc. (Pottstown Landfill), OP–46–0033, effective April 20, 1999.

(*2*) FPL Energy MH 50, L.P., PA–23–0084, effective July 26, 1999, except for the expiration date.

(*3*) Exelon Generation Company—Richmond Generating Station, PA–51–4903, effective July 11, 2001.

(ii) Additional Materials—Other materials submitted by the Commonwealth of Pennsylvania in support of and pertaining to the RACT determinations for the sources listed in paragraph (c)(182) (i)(B) of this section.

[FR Doc. 01–26763 Filed 10–29–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA–4183; FRL–7089–7]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; VOC and NO_X RACT Determinations for Eight Individual Sources in the Philadelphia-Wilmington-Trenton Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

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

EFFECTIVE DATE: This final rule is effective on November 14, 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; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Marcia Spink (215) 814–2104 or by e-mail at *spink.marcia@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On May 2, 1996, June 10, 1996, January 21, 1997, April 9, 1999, August 9, 2000, and March 23, 2001, PADEP submitted revisions to the Pennsylvania SIP which establish and impose RACT for several sources of VOC and/or NO_X. This rulemaking pertains to eight of those sources. The remaining sources are or have been the subject of separate rulemakings. The Commonwealth's submittals consist of plan approvals and operating permits which impose VOC and/or NO_X RACT requirements for each source. These eight sources are all located in the Philadelphia area and include: Brown Printing Company, Cardone Industries (Chew Street), Cardone Industries (Rising Sun Avenue), Naval Surface Warfare Center—Carderock Division, SUN CHEMICALS—General Printing Ink Division, Sunoco Chemicals—Frankford Plant, U.S. Steel Group/USX Corporation, and Wheelabrator Falls, Incorporated.

On August 31, 2001, EPA published a direct final rule (66 FR 45933) and a companion notice of proposed rulemaking (66 FR 45954) to approve these SIP revisions. On October 1, 2001, we received adverse comments on our direct final rule from the Citizens for Pennsylvania's Future (PennFuture). On October 11, 2001, we published a timely withdrawal in the **Federal Register** informing the public that the direct final rule did not take effect. We indicated in our August 31, 2001 direct final rulemaking that if we received adverse comments, EPA would address all public comments in a subsequent final rule based on the proposed rule (66 FR 45954). This is that subsequent final rule. A description of the RACT determination(s) made for each source was provided in the August 31, 2001 direct final rule and will not be restated here. A summary of the comments submitted by PennFuture germane to this final rulemaking and EPA's responses are provided in Section II of this document.

II. Public Comments and Responses

On October 1, 2001, the Citizens for Pennsylvania's Future (PennFuture) submitted adverse comments on the proposed rule published by EPA in the **Federal Register** on August 31, 2001 to approve case-by-case RACT SIP submissions from the Commonwealth for NO_X and or VOC sources located in the Philadelphia area. A summary of those comments and EPA's responses are provided below.

A. Comment: PennFuture comments that EPA has conducted no independent technical review, and has prepared no technical support document to survey potential control technologies, determine the capital and operating costs of different options, and rank these options in total and marginal cost per ton of NO_X and VOC controlled. In citing the definition of the term ''RACT,'' and the Strelow Memorandum [Roger Strelow, Assistant Administrator for Air and Waste Management, EPA, December 9, 1976, cited in *Michigan* v. *Thomas,* 805 F.2d 176, 180 (6th Cir. 1986) and at 62 FR 43134, 43136 (1997)], PennFuture appears to comment that in every situation, RACT must include an emission rate. PennFuture asserts that EPA should conduct its own RACT evaluation for each source, or at a minimum document a step-by-step review demonstrating the adequacy of state evaluations, to ensure that appropriate control technology is applied. The commenter also believes that EPA's failure to conduct its own independent review of control technologies has resulted in our proposing to approve some RACT determinations that fail to meet the terms of EPA's own RACT standard.

Response: On March 23, 1998 (63 FR 13789), EPA granted conditional limited approval of Pennsylvania's generic RACT regulations, 25 PA Code Chapters 121 and 129, thereby approving the definitions, provisions and procedures contained within those regulations under which the Commonwealth would require and impose RACT. Subsection 129.91, *Control of major sources of NO_X and VOCs,* requires subject facilities to submit a RACT plan proposal to both the Pennsylvania Department of Environmental Protection (DEP) and to EPA Region III by July 15, 1994 in accordance with subsection 129.92, entitled, *RACT proposal requirements.* Under subsection 129.92, that proposal is to include, among other information: (1) A list each of subject source at the facility; (2) The size or capacity of each

affected source, and the types of fuel combusted, and the types and amounts of materials processed or produced at each source; (3) A physical description of each source and its operating characteristics; (4) Estimates of potential and actual emissions from each affected source with supporting documentation; (5) A RACT analysis which meets the requirements of subsection 129.92 (b), including technical and economic support documentation for each affected source; (6) A schedule for implementation as expeditiously as practicable but not later than May 15, 1995; (7) The testing, monitoring, recordkeeping and reporting procedures proposed to demonstrate compliance with RACT; and (8) any additional information requested by the DEP necessary to evaluate the RACT proposal. Under subsection 129.91, the DEP will approve, deny or modify each RACT proposal, and submit each RACT determination to EPA for approval as a SIP revision.

The conditional nature of EPA's March 23, 1998 conditional limited approval did not impose any conditions pertaining to the regulation's procedures for the submittal of RACT plans and analyses by subject sources and approval of case-by case RACT determinations by the DEP. Rather, EPA stated that ''* * * RACT rules *may not merely be procedural rules* (emphasis added) that require the source and the State to later agree to the appropriate level of control; rather the rules must identify the appropriate level of control for source categories or individual sources.''

On May 3, 2001 (66 FR 22123), EPA published a rulemaking determining that Pennsylvania had satisfied the conditions imposed in its conditional limited approval. In that rulemaking, EPA removed the conditional status of its approval of the Commonwealth's generic VOC and NO_X RACT regulations on a statewide basis. EPA received no public comments on its action and that final rule removing the conditional status of Pennsylvania's VOC and NO_X RACT regulations became effective on June 18, 2001. As of that time, Pennsylvania's generic VOC and NO_X RACT regulations retained a limited approval status. On September 6, 2001 (66 FR 46571), EPA proposed to remove the limited nature of its approval of Pennsylvania's generic RACT regulation in the Philadelphia area. EPA received no public comments on that proposal. Final action converting the limited approval to full approval shall occur once EPA has completed rulemaking to approve either (1) the case-by-case RACT proposals for all sources subject to the RACT requirements currently known in the Philadelphia area *or* (2) for a sufficient number of sources such that the emissions from any remaining subject sources represent a de minimis level of emissions as defined in the March 23, 1998 rulemaking (63 FR 13789).

EPA agrees that it has an obligation to review the case-by-case RACT plan approvals and/or permits submitted as individual SIP revisions by Commonwealth to verify and determine if they are consistent with the RACT requirements of the Act and any relevant EPA guidance. EPA does not agree, however, that this obligation to review the case-by-case RACT determinations submitted by Pennsylvania necessarily extends to our performing our own RACT analyses, independent of the sources' RACT plans/analyses (included as part of the case-by case RACT SIP revisions) or the Commonwealth's analyses. EPA first reviews this submission to ensure that the source and the Commonwealth followed the SIP-approved generic rule when applying for and imposing RACT for a specific source. Then EPA performs a thorough review of the technical and economic analyses conducted by the source and the state. If EPA believes additional information may further support or would undercut the RACT analyses submitted by the state, then EPA may add additional EPA-generated analyses to the record.

While RACT, as defined for an individual source or source category, often does specify an emission rate, such is not always the case. EPA has issued Control Technique Guidelines (CTGs) which states are to use as guidance in development of their RACT determinations/rules for certain sources or source categories. Not every CTG issued by EPA includes an emission rate. There are several examples of CTGs issued by EPA wherein equipment standards and/or work practice standards alone are provided as RACT guidance for all or part of the processes covered. Such examples include the CTGs issued for Bulk gasoline plants, Gasoline service stations—Stage I, Petroleum Storage in Fixed-roof tanks, Petroleum refinery processes, Solvent metal cleaning, Pharmaceutical products, External Floating roof tanks and Synthetic Organic Chemical Manufacturing (SOCMI)/polymer manufacturing. (The publication numbers for these CTG documents may be found at *http://www.epa.gov/ttn/catc/dir1/ctg.txt).*

EPA disagrees with PennFuture's general comment that our failure to conduct our own independent review of control technologies for every case-by-case RACT determination conducted by the Commonwealth has resulted in our proposing to approve some RACT determinations that fail to meet the terms of our own RACT standard. PennFuture submitted comments specific to the case-by-case RACT determinations for two located in the Philadelphia area, namely for Kurz-Hastings and GATX Terminals Corporation. EPA summarizes those comments and provides responses in the final rule pertaining to those sources.

B. Comment: PennFuture comments that when EPA reviewed Pennsylvania's RACT program, it noted that Pennsylvania coal-fired boilers with a rated heat input of equal to or greater than 100 million Btu per hour ''are some of the largest NO_X emitting sources in the Commonwealth and in the Northeast United States'' [63 FR 13789, 13791 (1998)] and as such should have numeric emission limitations imposed as RACT whether or not they install presumptive RACT (under 25 Pa.Code 129.93) to guarantee that sources would achieve quantifiable emissions reductions under the RACT program. PennFuture goes on to comment that because EPA has not conducted and documented a technical review of Pennsylvania case-by case RACT submissions, EPA has not demonstrated that these large boilers are subject to ''numeric emission limitations'' under RACT. EPA must conduct a thorough RACT evaluation or review for each such source, and must document the application of numeric emission limits and quantifiable reductions for each coal-fired boiler with a rated heat input of over 100 million Btu per hour.

Response: Circumstances may exist wherein a state could justify otherwise, however, in general, EPA agrees with PennFuture that coal-fired boilers with a rated heat input of equal to or greater than 100 million Btu per hour should have numeric emission limitations imposed as RACT whether or not they install presumptive RACT (under 25 Pa.Code 129.93). As provided in the response found in II. A, EPA does not agree that it must conduct its own technical analysis of each of the case-by-case RACT determinations submitted for each RACT source in order to document that its RACT requirements include numeric emission limitations. That determination can be made by EPA when it reviews the plan approval, consent order, or permit issued to such a source as submitted by the Commonwealth as SIP revision. PennFuture's comment did not point to a specific instance where a RACT plan

approval, consent order or permit imposing RACT on a coal-fired boiler with a rated heat input of equal to or greater than 100 million Btu per hour did, in fact, lack a numerical emission limitation(s). Nonetheless, pursuant to PennFuture's comment, EPA has re-examined all of the case-by-case RACT SIP submissions made by the Commonwealth for such sources located in the Philadelphia area. That re-examination, combined with information provided by the Commonwealth, indicates that each case-by-case RACT plan approval, consent order and/or permit for each coal-fired boiler with a rated heat input of equal to or greater than 100 million Btu per hour includes a numeric emission limitation. A listing of each source, its plan approval, consent order and/or permit number and its numerical emission limitation has been placed in the Administrative Records for the case-by-case RACT rulemakings for the Philadelphia area.

C. Comment: PennFuture asserts that the Commonwealth has not adopted and submitted category RACT rules for all VOC source categories for which federal control technique guidelines (CTGs) have been issued. The commenter refers to Appendix 1 of the Technical Support Document (dated May 14, 2001), prepared by EPA in support of its proposed rule to redesignate the Pittsburgh-Beaver Valley Ozone Nonattainment Area (66 FR 29270), to assert that EPA has failed to require the Commonwealth to submit VOC RACT rules for certain categories of sources. PennFuture specifically names source categories such as equipment leaks from natural gas/gas processing plants, coke oven batteries, iron and steel foundries, and publically owned treatment works and asserts that the Commonwealth has neglected a statutory requirement to adopt category RACT regulations for these and 14 other unnamed VOC source categories. PennFuture's comment cites to *Wall* v. *EPA,* 2001 FED App. 0318P (6th Cir.) (Cincinnati ozone redesignation and RACT). EPA should reject any proposed case-by-case VOC RACT for a source in a category for which there is a CTG but no Pennsylvania RACT regulation.

Response: EPA has not issued CTGs for coke oven batteries, iron and steel foundries and publically owned treatment works. The Appendix 1, referred to by the commenter, lists CTG covered categories as well as source categories taken from two STAPPA/ALAPCO documents entitled, ''Meeting the 15-Percent Rate-of-Progress Requirement Under the Clean Air Act—A Menu of Options'' (September 1993) and ''Controlling Nitrogen Oxides Under the Clean Air Act—A Menu of Options'' (July 1994). The categories referenced by PennFuture are not VOC categories for which EPA has issued CTGs, but were included in Appendix A as examples of some of the types of sources that could be subject to Pennsylvania's generic RACT regulations. The Commonwealth is under no statutory obligation to adopt RACT rules for source *categories* for which EPA has not issued a CTG. In fact, CTGs do not exist for all but one of the categories to which the commenter explicitly refers.

The Act requires that states adopt regulations to impose RACT for ''major sources of VOC,'' located within those areas of a state where RACT applies under Part D of the Act [182(b)(2)(C)]. This is referred to as the non-CTG VOC RACT requirement. Moreover, EPA disagrees that there is a statutory mandate that a state adopt a source category RACT regulation even for a source category where EPA has issued a CTG. There are two statutory provisions that address RACT for sources covered by a CTG. One provides that states must adopt RACT for ''any category of VOC sources'' covered by a CTG issued prior to November 15, 1990 [182(b)(2)(A)]. The other provides that states must adopt VOC RACT for all ''VOC sources'' covered by a CTG issued after November 15, 1990 [182(b)(2)(B)]. EPA has long interpreted the statutory RACT requirement to be met either by adoption of category-specific rules or by source-specific rules for each source within a category. When initially established, RACT was clearly defined as a case-by-case determination, but EPA provided CTG's to simplify the process for states such that they would not be required to adopt hundreds or thousands of individual rules. See Strelow Memorandum dated December 9, 1976 and 44 FR 53761, September 17, 1979. EPA does not believe that Congress' use of ''source category'' in one provision of section 182(b)(2) was intended to preclude the adoption of source-specific rules.

Thus, where CTG-subject sources are located within those areas of a state where RACT applies under Part D of the Act, the state is obligated to impose RACT for the same universe of sources covered by the CTG. However, that obligation is not required to be met by the adoption and submittal of a source category RACT rule. A state may, instead, opt to impose RACT for such sources in permits, plan approvals, consent orders or in any other state enforceable document and submit those documents to EPA for approval as source-specific SIP revisions. This option has been exercised by many states, and happens most commonly when only a few CTG-subject sources are located in the state. The source-specific approach is generally employed to avoid what can be a lengthy and resource-intensive state rule adoption process for only a few sources that may have different needs and considerations that must be taken into account. EPA disagrees with the commenter's citing to *Wall* v. *EPA,* 2001 FED App. 0318P (6th Cir. Sept. 11, 2001) (Cincinnati ozone redesignation and RACT) as indicative of his contentions regarding states' obligations to adopt category-wide RACT regulations for sources covered by CTGs. The opinion rendered in the cited case neither requires states to adopt category-wide RACT regulations for sources covered by CTGs, nor does it preclude states from exercising their option to impose RACT for CTG-subject sources, on a case-by-case basis. Rather, it speaks only to the Act's requirement that states must implement RACT for CTG-subject sources in ozone nonattainment areas; and not to any specific regulatory construct by which they must do so. Pennsylvania has implemented RACT for all CTG-subject sources in the Philadelphia area and EPA has approved all such RACT determinations as revisions to the Pennsylvania SIP. As stated earlier, there is one source category explicitly included in PennFuture's comment for which EPA has issued a CTG, namely natural gas/gas processing plants. The Commonwealth made a negative declaration to EPA on April 13, 1993, stating that as of that date there were no applicable sources in this category. Therefore, the Commonwealth did not adopt a category RACT regulation for natural gas/gas processing plants.

D. Comment: PennFuture cites EPA correspondence [letter from Marcia Spink, EPA, to James Salvaggio, DEP, December 15, 1993] to the Commonwealth which states that establishing any dollar figure in RACT guidance will not provide for the ''automatic'' selection or rejection of a control technology or emission limitation as RACT for a source or source category. With regard to the Pennsylvania DEP's intent to finalize a NO_X RACT Guidance Document for implementation of its NO_X RACT regulation, EPA's 1993 letter stated that the document could improperly be used to establish ''bright line'' or ''cook-book'' approaches, particularly for a regulation applicable to many source categories and suggested that if the guidance document must include dollar

figures/ton, it provide approximate ranges by source category. PennFuture comments that DEP issued its ''Guidance Document on Reasonably Available Control Technology for Sources of NO_X Emissions,'' March 11, 1994, and on pp. 8–9 states that the acceptable threshold is $1500 per ton, and that this figure applies to ''all source categories.'' PennFuture notes that EPA later objected to the $1500 per ton methodology as ''not generically acceptable to EPA'' [letter from Thomas Maslany, EPA, to James Salvaggio, DEP, June 24, 1997] and further stated in a **Federal Register** notice that a ''dollar per ton threshold'' is ''inconsistent with the definition of RACT'' [62 FR 43134, 37–38 (1997)].

PennFuture comments that EPA is proposing to approve RACT determinations based on a cost per ton method that EPA had previously rejected, and according to its own clearly expressed standard, EPA must not approve RACT determinations by Pennsylvania DEP that apply this $1500 per ton threshold. PennFuture asserts EPA must reject all Pennsylvania RACT determinations applying the standard of $1500 per ton, or any other ''bright line'' approach, as failing to follow EPA procedures established for Pennsylvania RACT.

Response: EPA still takes the position that a single cost per ton dollar figure may not, in and of itself, form the basis for rejecting a control technology, equipment standard, or work practice standard as RACT. The Technical Support Document prepared by EPA in support of its March 23, 1998 rulemaking [63 FR 13789] clearly indicates that the Commonwealth's document, ''Guidance Document on Reasonably Available Control Technology for Sources of NO_X Emissions.'' March 11, 1994, had not been included as part of the SIP submission of the Commonwealth's generic regulation and, therefore, had not been approved by EPA. EPA further notes that the Administrative Record of the March 23, 1998 rulemaking [63 FR 13789], in addition to the correspondence cited by PennFuture, also includes correspondence from DEP to EPA [letter from James Salvaggio, DEP to David Arnold, EPA, September 10, 1997] stating that DEP's RACT guidance document does not establish a maximum dollar per ton for determining the cost effectiveness for RACT determinations and notes that the DEP's $1500 per ton cost effectiveness is a target value and not an absolute maximum. For example, in its analyses of the cost effectiveness of RACT control options submitted by DEP as part of the case-by-case SIP revision for Peoples Natural Gas (PNG) Valley Compressor Station's turbo charged lean burn IC engine (see the Administrative Record for 66 FR 43492), the Commonwealth included DEP interoffice memoranda (Thomas Joseph to Krishnan Ramamurthy, July 14, 1994 and Krishnan Ramamurthy to Thomas McGinley, Babu Patel, Ronald Davis, Richard Maxwell, and Devendra Verma, July 15, 1994) which spoke directly to the $1500/ton dollar figure as being a guideline and not an upper limit. These memoranda explain that although PNG initially proposed intermediate original equipment manufacturer (OEM) combustion controls which would have reduced NO_X emissions from 254.7 tons per year to 115 tons per year (by 55%) at a cost of $1355 per ton reduced, DEP required the installation of an OEM lean combustion modification that reduced NO_X emissions from 254.7 tons per year to 76 tons per year (by 69%) at a cost of $1684 per ton reduced. The DEP's July 15, 1994 interoffice memorandum says of the PNG RACT determination which exceeded the cost effectiveness screening level of $1500 per ton ''Tom's (Joseph) insistence for the next more stringent level of control than the company's chosen level in the case of PNG was consistent with EPA Region III's sentiment that establishing any dollar figure in RACT guidance will not provide for an ''automatic'' rejection of a control technology as RACT for a source.''

In no instance, has EPA proposed to approve a RACT determination submitted by the Commonwealth which was based solely on a conclusion that controls that cost more than $1500/ton were not required as RACT. As explained in the response provided in section II. A. of this document, EPA conducts its review of the entire case-by-case RACT SIP submittal including the source's proposed RACT plan and analyses, Pennsylvania's analyses and the RACT plan approval, consent order or permit itself to insure that the requirements of the SIP-approved generic RACT have been followed. These analyses not only evaluate and consider the costs of potential control options, but also evaluate their technological feasibility.

E. Comment: PennFuture comments that any emission reduction credits (ERCs) earned by sources subject to RACT must be surplus to all applicable state and federal requirements. Under Pennsylvania law, ERCs must be surplus, permanent, quantified, and Federally enforceable. 25 Pa.Code 127.207(1). As to the requirement that ERCs be surplus, the Pennsylvania Code states: ERCs shall be included in the current emission inventory, and may not be required by or be used to meet past or current SIP, attainment demonstration, RFP, emission limitation or compliance plans. Emission reductions necessary to meet NSPS, LAER, RACT, Best Available Technology, BACT and permit or plan approval emissions limitations or another emissions limitation required by the Clean Air Act or the [Air Pollution Control Act] may not be used to generate ERCs. 25 Pa.Code 127.207(1)(i). To be creditable, ERCs must surpass not only RACT requirements but a host of other possible sources of emission limits. PennFuture comments that some of the RACT evaluations at issue in the current EPA notices purport to establish RACT as a baseline for future ERCs. PennFuture does acknowledge that EPA notes in its boilerplate for the notices, that Pennsylvania and EPA have established a series of NO_X-reducing rules, including the recent Chapter 145 rule, to reduce NO_X at large utility and industrial sources. See, for example, 66 FR 42415, 16–17 (August 13, 2001). Because any ERCs must be surplus to the most stringent limitation applicable under state or federal law as described in the Pennsylvania Code provision set forth above, DEP and EPA must not approve ERCs unless they surpass all such limitations in addition to any limits set by RACT.

Response: EPA agrees with this comment by PennFuture. The approval of a case-by-case RACT determination, in and of itself, does not establish the baseline from which further emission reductions may be calculated and assumed creditable under the Commonwealth's SIP-approved NSR and ERC program. Moreover, EPA's review of the Pennsylvania DEP's implementation of its approved SIP-approved NSR and ERC program indicates that the Commonwealth calculates and credits ERCs in accordance with the SIP-approved criteria for doing so as outlined in PennFuture's comment. No source for which EPA is approving a case-by-case RACT determination should assume that its RACT approval alone automatically establishes the baseline against which it may calculate creditable ERCs.

F. Comment: PennFuture comments that as in the case with Pennsylvania Power—Newcastle, EPA should compare RACT proposals to applicable acid rain program emission limits and control strategies. PennFuture contends that EPA previously disapproved a RACT proposal for the Pennsylvania

Power—Newcastle plant [62 FR 43959 (1997); 63 FR 23668 (1998)] and that EPA did so on the basis that the acid rain program requires more stringent emission limits. PennFuture asserts that while EPA had originally proposed to approve this proposal, an analysis of comparable boilers and, especially, a comparison to Phase II emission limits under the acid rain program led EPA to conclude that the RACT proposal emission limits were too lenient. [62 FR at 43961]. Therefore, PennFuture contends that for sources subject to the acid rain program, EPA should consider emissions and control strategies for compliance with acid rain emission limits when evaluating proposals for compliance with RACT.

Response: Title IV of the Act, addressing the acid rain program, contains NO_X emission requirements for utilities which must be met *in addition* to any RACT requirements (see NO_X Supplement to the General Preamble at 57 FR 55625, November 25, 1992). The Act provides for a number of control programs that may affect similar sources. For example, new sources may be subject to new source performance standards (NSPS), best available control technology (BACT), and lowest achievable emission rate (LAER). Other controls, under such programs as the acid rain program or the hazardous air pollutant program may also apply to sources. However, the applicability of these other requirements, which are often more stringent than RACT, do not establish what requirements must apply under the RACT program. While these programs may provide information as to the technical and economic feasibility of reduction programs for RACT, there is no presumption that acid rain controls should be mandated as RACT.

EPA stated in the final disapproval of the NO_X RACT determination for PPNC [63 FR at 23669], that the discussion concerning average emission rates for boilers with respect to the acid rain program requirements were included in order to provide a context for EPA's proposed disapproval. EPA made clear in its August 18, 1997 proposed disapproval of Pennsylvania Powers'—Newcastle (PPNC) RACT determination, that the basis for disapproval was a comparison between PPNC's boilers and other similar combustion units, not acid rain limits. In fact, EPA stated in the August 18, 1997 proposed disapproval that ''Without additional knowledge or information, it would be erroneous and premature to conclude that the limits in the acid rain permit are RACT.'' [62 FR at 43961]. EPA clearly stated in the final disapproval for PPNC that it did not use acid rain permit limits, or Pennsylvania's participation in any other NO_X control program, to determine PPNC RACT approvability [63 FR at 23670]. Nor has EPA intended to use participation in NO_X control programs including acid rain, in determining RACT for PPNC or any other subject sources. EPA also stated that the April 30, 1998, PPNC disapproval was based on the absence of pertinent information regarding a computerized combustion optimization system through an enforceable permit, not comparison of acid rain permit limits.

III. Final Action

EPA is approving the SIP revisions to the Pennsylvania SIP submitted by PADEP to establish and require VOC and/or NO_X RACT for eight major sources located in the Philadelphia area. EPA is approving these RACT SIP submittals because the Philadelphia Air Management Services (AMS) and PADEP established and imposed these RACT requirements in accordance with the criteria set forth in the SIP-approved RACT regulations applicable to these sources. The AMS and PADEP have also imposed record-keeping, monitoring, and testing requirements on these sources sufficient to determine compliance with the applicable RACT determinations.

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 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 State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 **Note**) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or

practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability establishing source-specific requirements for eight named sources.

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 31, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving VOC and/or NO_X RACT for eight sources located in the Philadelphia area may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: October 15, 2001.

James W. Newsom,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c)(174) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(174) Revisions to the Pennsylvania Regulations, Chapter 129 pertaining to VOC and/or NO_X RACT for sources located in the Philadelphia area submitted by the Pennsylvania Department of Environmental Protection on May 2, 1996, June 10, 1996, January 21, 1997, April 9, 1999, August 9, 2000, and two submittals on March 23, 2001.

(i) Incorporation by reference.

(A) Letters submitted by the Pennsylvania Department of Environmental Protection transmitting source-specific VOC and/or NO_X RACT determinations, in the form of plan approvals and operating permits, on May 2, 1996, June 10, 1996, January 21, 1997, April 9, 1999, August 9, 2000, and two letters on March 23, 2001.

(B) Plan approvals (PA), Operating permits (OP) issued to the following sources:

(*1*) Cardone Industries, PA–51–3887, for PLID 3887, effective May 29, 1995.

(*2*) Cardone Industries, PA–51–2237, for PLID 2237, effective May 29, 1995.

(*3*) Naval Surface Warfare Center—Carderock Division, PA–51–9724, for PLID 9724, effective December 27, 1997.

(*4*) Wheelabrator Falls, Inc., OP–09–0013, effective January 11, 1996 (as amended May 17, 1996).

(*5*) U.S. Steel Group/USX Corporation, OP–09–0006, effective April 8, 1999, except for the expiration date.

(*6*) Brown Printing Company, OP–46–0018A, effective May 17, 2000, except for the expiration date and condition 12.

(*7*) SUN CHEMICAL—General Printing Ink Division, PA–51–2052, for PLID 2052, effective July 14, 2000.

(*8*) Sunoco Chemicals, Frankford Plant, PA–51–1551, for PLID 1551, effective July 27, 1999, except for conditions 1.A.(2)–(4), 1.A.(6), 1.A.(8); conditions 1.B.(1), 1.B. (3)–(6); the last sentence of condition 2.A.; conditions 2.B.–D.; 2.G., the last sentence of 2.H., 2.I.; and condition 7.

(ii) Additional materials. Other materials submitted by the Commonwealth of Pennsylvania in support of and pertaining to the RACT determinations for the sources listed in paragraph (c)(174) (i)(B) of this section.

[FR Doc. 01–26764 Filed 10–29–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[Region II Docket No. PR6–233a, FRL–7093–9]

Approval and Promulgation of State Plans for Designated Facilities; Puerto Rico

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a negative declaration submitted by the Commonwealth of Puerto Rico. The negative declaration satisfies EPA's promulgated Emission Guidelines (EG) for existing small municipal waste combustion (MWC) units. In accordance with the EG, states are not required to submit a plan to implement and enforce the EG if there are no existing small MWC units in the state and if it submits a negative declaration letter in place of the State Plan.

DATES: This direct final rule is effective on December 31, 2001 without further notice, unless EPA receives adverse comment by November 29, 2001.

If an adverse comment is received, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: All comments should be addressed to: Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region II Office, 290 Broadway, New York, New York 10007–1866.

A copy of the Commonwealth submittal is available for inspection at the Region 2 Office in New York City. Those interested in inspecting the submittal must arrange an appointment in advance by calling (212) 637–4249. Alternatively, appointments may be arranged via e-mail by sending a message to Ted Gardella at *Gardella.Anthony@epa.gov.* The office address is 290 Broadway, Air Programs Branch, 25th Floor, New York, New York 10007–1866.

A copy of the Commonwealth submittal is also available for inspection at the respective offices:

Puerto Rico Environmental Quality Board, National Plaza Building, 431 Ponce De Leon Avenue, Hato Rey, Puerto Rico 00917.

Environmental Protection Agency, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Ted Gardella, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, telephone, (212) 637–4249.

SUPPLEMENTARY INFORMATION: The following table of contents describes the format for the **SUPPLEMENTARY INFORMATION** section:

Table of Contents

A. What action Is EPA taking today?
B. Why Is EPA approving Puerto Rico's negative declaration?
C. What if an existing small MWC unit is discovered after today's action becomes effective?
D. What is the background for Emission Guidelines and State Plans?
E. Where can you find the EG requirements for small MWC units?

F. Who must comply with the EG requirements?
G. What are EPA's conclusions?
H. Administrative Requirements

A. What Action Is EPA Taking Today?

The Environmental Protection Agency (EPA) is approving a negative declaration submitted by the Commonwealth of Puerto Rico dated August 2, 2001. This negative declaration concerns existing small municipal waste combustors throughout the Commonwealth of Puerto Rico. The negative declaration satisfies the federal Emission Guidelines (EG) requirements of EPA's promulgated regulation entitled ''Emission Guidelines for Existing Small Municipal Waste Combustion Units'' (65 FR 76378, December 6, 2000). The negative declaration officially certifies to EPA that, to the best of the Commonwealth's knowledge, there are no small MWC units in operation in the Commonwealth of Puerto Rico.

B. Why Is EPA Approving Puerto Rico's Negative Declaration?

EPA has evaluated the negative declaration submitted by Puerto Rico for consistency with the Clean Air Act (Act), EPA guidelines and policy. EPA has determined that Puerto Rico's negative declaration meets all the requirements and, therefore, EPA is approving the Commonwealth's certification that there are no existing small MWC units in operation throughout the Commonwealth. Puerto Rico has certified in its negative declaration that it searched island wide all the facilities that operate solid waste combustors. Puerto Rico's search included permits and EPA's Aerometric Information Retrival System (AIRS).

EPA's approval of Puerto Rico's negative declaration is based on the following:

(1) Puerto Rico has met the requirements of § 60.23(b) in Title 40, part 60, subpart B of the *Code of Federal Regulations* (40 CFR part 60) for submittal of a letter of negative declaration that certifies there are no existing facilities in the Commonwealth. Such certification exempts Puerto Rico from the requirements to submit a plan.

(2) EPA's own source inventory indicates there are no existing small MWC units operating in the Commonwealth of Puerto Rico. During July 1998, EPA compiled an inventory of small MWC units as a required element of the small MWC EG.

C. What if an Existing Small MWC Unit Is Discovered After Today's Action Becomes Effective?

Section 60.1530 of 40 CFR part 60, subpart BBBB (page 76386, 65 FR 76378, December 6, 2000) requires that if, after the effective date of today's action, an existing small MWC unit is found in the State, the Federal Plan implementing the EG would automatically apply to that small MWC unit until a State Plan is approved by EPA.

The Federal Plan was proposed on June 14, 2001 (66 FR 32484) and is expected to be promulgated in early 2002. The Federal Plan will apply to small MWCs in states, commonwealths, and territories (1) where the EPA inventory identifies small MWCs and a plan is required and has not been submitted and approved by EPA and (2) where the EPA inventory did not identify any small MWC and a negative declaration has been received and approved by EPA (such as Puerto Rico) and a small MWC is subsequently identified in the State or territory. If and when a State Plan (or in this case a Commonwealth Plan) is submitted and approved that applies to the small MWC, the Federal Plan would no longer apply.

D. What Is the Background for Emission Guidelines and State Plans?

Section 111(d) of the Act requires that pollutants controlled under New Source Performance Standards (NSPS) must also be controlled at existing sources in the same source category. Once an NSPS is issued, EPA then publishes an EG applicable to the control of the same pollutant from existing (designated) facilities. States with designated facilities must then develop State Plans to adopt the EG into their body of regulations.

Under section 129 of the Act, the EG is not federally enforceable. Section 129(b)(2) of the Act requires states to submit State Plans to EPA for approval. State Plans must be at least as protective as the EG, and they become federally enforceable upon EPA approval. The procedures for adopting and submitting State Plans, as well as state requirements for a negative declaration, are in 40 CFR part 60, subpart B.

EPA originally issued the subpart B provisions on November 17, 1975. EPA amended subpart B on December 19, 1995, to allow the subparts developed under section 129 to include specifications that supersede the general provisions in subpart B regarding the schedule for submittal of State Plans, the stringency of the emission limitations, and the compliance schedules (60 FR 65414).

E. Where Can You Find the EG Requirements for Small MWC Units?

On December 6, 2000, under sections 111 and 129 of the Act, EPA issued the NSPS applicable to new MWC units and the EG applicable to existing small MWC units. The NSPS and EG are codified at 40 CFR part 60, subparts AAAA (65 FR 76350) and BBBB (65 FR 76378), respectively.

F. Who Must Comply With the EG Requirements?

A small MWC unit having the capacity to combust at least 35 tons per day of municipal solid waste but no more than 250 tons per day of municipal solid waste or refuse derived fuel that commenced construction on or before August 30, 1999 (''existing small MWC unit'') must comply with these requirements. See § 60.1555 of 40 CFR part 60, subpart BBBB for a list of small MWC units exempt from the federal requirements.

G. What Are EPA's Conclusions?

EPA has determined that Puerto Rico's negative declaration meets all the requirements and, therefore, EPA is approving Puerto Rico's certification that no small MWC units are in operation in the Commonwealth of Puerto Rico. If any existing small MWC units are discovered in the future, the Federal Plan implementing the EG would automatically apply to that small MWC unit until the State Plan is approved by EPA.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the negative declaration should relevant adverse comments be filed. This rule will be effective December 31, 2001 without further notice unless the Agency receives significant, material adverse comments by November 29, 2001.

If EPA receives significant, material adverse comments by the above date, the Agency will withdraw this action before the effective date by publishing a subsequent document in the **Federal Register** that will withdraw this final action. EPA will address all public comments received in a subsequent final rule based on the parallel proposed rule published in today's **Federal Register**. EPA will not institute a second comment period on this action. Any

parties interested in commenting on this action should do so at this time.

H. Administrative Requirements

Executive Order 12866

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

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 does not involve decisions intended to mitigate environmental health or safety risks.

Executive Order 13132

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

Under section 6(b) of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or EPA consults with state and local officials early in the process of developing the proposed regulation. Under section 6(c) of Executive Order 13132, EPA may not issue a regulation that has federalism implications and that preempts state law, unless the Agency consults with state and local officials early in the process of developing the proposed regulation.

EPA has concluded that this rule may have federalism implications. The only reason why this rule may have federalism implications is if in the future a small MWC unit is found in the Commonwealth of Puerto Rico the unit will become subject to the Federal Plan until a State Plan is approved by EPA. However, it will not impose substantial direct compliance costs on state or local governments, nor will it preempt state law. Thus, the requirements of sections 6(b) and 6(c) of the Executive Order do not apply to this rule.

Executive Order 13175

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

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

Regulatory Flexibility

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

This rule will not have a significant impact on a substantial number of small entities because as a negative declaration it is not subject to the small MWC EG requirements. Therefore, because the Federal 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.

Unfunded Mandates

Under sections 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either state, commonwealth, 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, commonwealth, local, or tribal governments, or to the private sector, result from this action.

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). This rule will be effective December 31, 2001 unless EPA receives material adverse written comments by November 29, 2001.

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.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

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 31, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Waste treatment and disposal.

Dated: October 19, 2001.

William J. Muszynski,

Acting Regional Administrator, Region 2.

Part 62, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 62 U.S.C. 7401–7671q.

Subpart BBB—Puerto Rico

2. Part 62 is amended by adding new § 62.13105 and an undesignated heading to subpart BBB to read as follows:

Air Emissions From Existing Small Municipal Waste Combustion Units With The Capacity To Combust At Least 35 Tons Per Day But No More Than 250 Tons Per Day Of Municipal Solid Waste Or Refuse Derived Fuel and Constructed on or Before August 30, 1999.

§ 62.13105 Identification of plan—negative declaration.

Letter from the Puerto Rico Environmental Quality Board, submitted August 2, 2001, certifying that there are no existing small municipal waste combustion units in the Commonwealth of Puerto Rico subject to part 60, subpart BBBB of this chapter.

[FR Doc. 01–27283 Filed 10–29–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7771]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The effective date of each community's suspension is the third date (''Susp.'') listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Edward Pasterick, Division Director, Program Marketing and Partnership Division, Federal Insurance Administration and Mitigation Directorate, 500 C Street, SW., Room 411, Washington, DC 20472, (202) 646–3098.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 *et seq.*; unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Associate Director finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to

the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act

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

Regulatory Flexibility Act

The Associate Director has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

Regulatory Classification

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

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp.; p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp.; p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

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

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State and Location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current Effective Map Date	Date certain Federal assistance no longer available in special flood hazard areas
Region I				
Maine:				
Dixfield, Town of, Oxford County	230092	June 23, 1975, Emerg.; March 4, 1985, Reg. November 7, 2001.	November 11, 2001	November 21, 2001.
Greenville, Town of, Piscataquis County.	230409	July 17, 1975, Emerg.; March 4, 1987, Reg. November 7, 2001.	....do	Do.
Kingfield, Town of, Franklin County	230058	August 21, 1975, Emerg.; June 5, 1989, Reg. November 7, 2001.	....do	Do.
Region II				
New York:				
Larchmont, Village of, Westchester County.	360915	February 4, 1972, Emerg.; September 1, 1977, Reg. November 7, 2001.	....do	Do.
Utica, City of, Oneida County	360558	October 2, 1974, Emerg.; February 1, 1984, Reg. November 7, 2001.	....do	Do.
Region III				
Pennsylvania:				
Alburtis, Borough of, Lehigh County	420584	August 7, 1975, Emerg.; December 15, 1978, Reg. November 7, 2001.	....do	Do.
Allentown, City of, Lehigh County	420585	October 15, 1971, Emerg.; June 1, 1982, Reg. November 7, 2001.	....do	Do.
Catasauqua, Borough of, Lehigh County.	420586	December 3, 1971, Emerg.; November 1, 1979, Reg. November 7, 2001.	....do	Do.
Coopersburg, Borough of, Lehigh County.	420587	January 12, 1977, Emerg.; July 30, 1982, Reg. November 7, 2001.	....do	Do.
Coplay, Borough of, Lehigh County	421807	October 14, 1975, Emerg.; June 25, 1976, Reg. November 7, 2001.	....do	Do.
Emmaus, Borough of, Lehigh County.	420588	July 26, 1973, Emerg.; September 1, 1977, Reg. November 7, 2001.	....do	Do.
Fountain Hill, Borough of, Lehigh County.	421808	July 31, 1975, Emerg.; May 15, 1986, Reg. November 7, 2001.	....do	Do.
Hanover, Township of, Lehigh County.	422261	July 2, 1974, Emerg.; January 6, 1982, Reg. November 7, 2001.	....do	Do.
Heidelberg, Township of, Lehigh, County.	421809	February 21, 1975, Emerg.; June 15, 1981, Reg. November 7, 2001.	....do	Do.
Lower Macungie, Township of, Lehigh County.	420589	September 29, 1972, Emerg.; February 2, 1977, Reg. November 7, 2001.	....do	Do.
Lower Milford, Township of, Lehigh County.	421039	February 1, 1974, Emerg.; April 17, 1978, Reg. November 7, 2001.	....do	Do.
Lowhill, Township of, Lehigh County	421811	March 1, 1977, Emerg.; October 15, 1985, Reg. November 7, 2001.	....do	Do.

State and Location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current Effective Map Date	Date certain Federal assistance no longer available in special flood hazard areas
Lynn, Township of, Lehigh County ..	421812	July 21, 1976, Emerg.; September 30, 1987, Reg. November 7, 2001.	.....do	Do.
Macungie, Borough of, Lehigh County.	420590	April 18, 1974, Emerg.; April 15, 1980, Reg. November 7, 2001.	.....do	Do.
North Whitehall, Township of, Lehigh County.	421813	July 26, 1974, Emerg.; September 30, 1981, Reg. November 7, 2001.	.....do	Do
Salisbury, Township of, Lehigh County.	420591	April 22, 1975, Emerg.; September 24, 1984, Reg. November 7, 2001.	.....do	Do.
Slatington, Borough of, Lehigh County.	420592	June 4, 1975, Emerg.; March 16, 1981, Reg. November 7, 2001.	.....do	Do.
South Whitehall, Township of, Lehigh County.	420593	January 26, 1973, Emerg.; February 1, 1978, Reg. November 7, 2001.	.....do	Do.
Upper Macungie, Township of, Lehigh County.	421044	February 12, 1974, Emerg.; April 2, 1979, Reg. November 7, 2001.	.....do	Do.
Upper Milford, Township of, Lehigh County.	421815	October 10, 1974, Emerg.; May 19, 1981, Reg. November 7, 2001.	.....do	Do.
Upper Saucon, Township of, Lehigh County.	420594	February 25, 1972, Emerg.; July 15, 1977, Reg. November 7, 2001.	.....do	Do.
Washington, Township of, Lehigh County.	421816	August 21, 1974, Emerg.; April 15, 1981, Reg. November 7, 2001.	.....do	Do.
Weisenberg, Township of, Lehigh County.	421817	February 3, 1976, Emerg.; October 15, 1985, Reg. November 7, 2001.	.....do	Do.
Whitehall, Township of, Lehigh County.	420595	April 30, 1974, Emerg.; October 28, 1977, Reg. November 7, 2001.	.....do	Do.
Region IV				
Edisto Beach, Town of, Colleton County.	455414	March 19, 1971, Emerg.; April 9, 1971, Reg. November 7, 2001.	.....do	Do.
Walterboro, City of, Colleton County	450058	April 2, 1975, Emerg.; April 17, 1987, Reg. November 7, 2001.	.....do	Do.
Williams, Town of, Colleton County	450059	February 3, 1976, Emerg.; July 17, 1986, Reg. November 7, 2001.	.....do	Do.
Region VI				
Texas:				
Fort Bend County, Unincorporated Areas.	480228	March 19, 1987, Reg.; November 7, 2001.	.....do	Do.
Wharton County, Unincorporated Areas.	480652	February 27, 1987, Reg.; November 7, 2001.	.....do	Do.
Region VII				
Kansas:				
Baldwin, City of, Douglas County	200088	June 23, 1975, Emerg.; January 2, 1980, Reg. November 7, 2001.	.....do	Do.
Douglas County, Unincorporated Areas.	200087	May 30, 1975, Emerg.; March 2, 1981, Reg. November 7, 2001.	.....do	Do.
Eudora, City of, Douglas County	200089	June 12, 1975, Emerg.; January 16, 1981, Reg. November 7, 2001.	.....do	Do.
Lawrence, City of, Douglas County	200090	June 15, 1973, Emerg.; March 2, 1981, Reg. November 7, 2001.	.....do	Do.
Lecompton, City of, Douglas County	200091	July 2, 1975, Emerg.; March 15, 1979, November 7, 2001.	.....do	Do
Region I				
Vermont:				
Wells, Town of, Rutland County	500271	June 25, 1975, Emerg.; June 15, 1988, Reg. November 21, 2001.	November 21, 2001	November 21, 2001.
Region III				
New Jersey:				
Berkeley Heights, Township of, Union County.	340459	December 30, 1971, Emerg.; March 1, 1978, Reg. November 21, 2001.	.....do	Do.
Region V				
Ohio:				
Adams County Unincorporated Areas.	390001	March 14, 1978, Emerg.; November 21, 2001, Reg.	.....do	Do.
Manchester, Village of, Adams County.	390002	October 25, 1974, Emerg.; August 1, 1978, Reg. November 21, 2001.	.....do	Do.
Aberdeen, Village of, Brown County	390675	July 2, 1975, Emerg.; August 15, 1983, Reg. November 21, 2001.	.....do	Do.

State and Location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current Effective Map Date	Date certain Federal assistance no longer available in special flood hazard areas
Brown County, Unincorporated Areas County.	390034	May 9, 1977, Emerg.; November 21, 2001, Reg.	.....do	Do.
Higginsport, Village of, Brown County.	390677	January 29, 1976, Emerg.; September 15, 1983, Reg. November 21, 2001.	.....do	Do.
Mount Orab, Village of, Brown County.	390621	January 16, 2001, Emerg.; November 21, 2001, Reg.	.....do	Do.
Ripley, Village of, Brown County	390036	June 12, 1975, Emerg.; July 18, 1983, Reg. November 21, 2001.	.....do	Do.
Rome, Village of, Brown County	390003	February 16, 1977, Emerg.; October 18, 1983, Reg. November 21, 2001.	.....do	Do.
Region VI				
Oklahoma:				
Logan County, Unincorporated Areas.	400096	October 26, 1984, Emerg.; December 5, 1989, Reg. November 21, 2001.	.....do	Do.
Region IX				
California:				
Hidden Hills, City of, Los Angeles County.	060125	May 24, 1974, Emerg.; September 7, 1984, Reg. November 21, 2001.	.....do	Do.
Lassen County, Unincorporated Areas.	060092	June 26, 1986, Emerg.; September 4, 1987, Reg. November 21, 2001.	.....do	Do.
Palos Verdes Estates, City of, Los Angeles County.	060145	January 29, 1971, Emerg.; September 7, 1984, Reg. November 21, 2001.	.....do	Do.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: October 23, 2001.

Robert F. Shea,

Acting Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 01–27208 Filed 10–29–01; 8:45 am]

BILLING CODE 6718–05–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 660

[Docket No. 001226367–0367–01; I.D. 102201A]

Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Recreational Fishery Closure

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

ACTION: Fishery closure; request for comments.

SUMMARY: NMFS announces closure of the recreational fishery for rockfish and lingcod in Federal waters (3–200 nautical miles offshore) south of 40°10′ N lat. and seaward of the 20–fathom (36.9–m) depth contour off the coast of California from October 29 through December 31, 2001. This action, which is authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP) and its implementing regulations, is intended to protect overfished species.

DATES: Changes to management measures are effective 0001 hours local time (l.t.) October 29, 2001, through 1159 hours l.t. December 31, 2001, unless modified, superseded, or rescinded. Comments on this rule will be accepted through November 14, 2001.

ADDRESSES: Submit comments to D. Robert Lohn, Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115–0070; or Rod McInnis, Acting Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: Yvonne deReynier or Jamie Goen, Northwest Region, NMFS, 206–526–6140.

SUPPLEMENTARY INFORMATION:

Electronic Access

This **Federal Register** document is available on the Government Printing Office's Web site at *http://www.access.gpo.gov/su—docs/aces/aces140.html*.

Background

The Pacific Coast Groundfish FMP and its implementing regulations at 50 CFR part 660, subpart G, regulate fishing for 82 species of groundfish off the coasts of Washington, Oregon, and California. Annual groundfish specifications and management measures are initially developed by the Pacific Fishery Management Council (Council), and are implemented by NMFS. The specifications and management measures for the current fishing year (January 1 - December 31, 2001) were published at 66 FR 2338 (January 11, 2001), as amended at 66 FR 10208 (February 14, 2001), at 66 FR 18409 (April 9, 2001), at 66 FR 22467 (May 4, 2001), at 66 FR 28676 (May 24, 2001), at 66 FR 35388 (July 5, 2001), at 66 FR 38162 (July 23, 2001), and 66 FR 50851, (October 5, 2001).

Of the 82 species managed under the FMP, seven have been declared overfished under the Magnuson-Stevens Fishery Conservation and Management Act, including bocaccio and canary rockfish. The Council is developing rebuilding plans for these two species. Both bocaccio and canary rockfish are found primarily on the Continental shelf, and are classified as ''shelf'' rockfish species. They are caught directly and incidentally in the Pacific Coast groundfish (and non-groundfish) fisheries.

Canary rockfish is the most difficult overfished species to manage as its management places great constraint on managing other groundfish species. Its optimum yield (OY) was reduced from 1,045 mt in 1999 to 200 mt in 2000, and to 93 mt for 2001. From the 93 mt OY, 44 mt are set aside for the coastwide recreational catch, with 26 mt (22 mt

south of Cape Mendocino, 40°30′ N lat.) of the 44 mt expected to be taken in the California recreational fisheries for rockfish and lingcod.

Bocaccio is another overfished species of concern in the California recreational fisheries for rockfish and lingcod. The bocaccio rebuilding plan applies to bocaccio occurring off California south of Cape Mendocino (40°30′ N lat.). Bocaccio's 2001 OY for that area is 100 mt, with 52 mt expected to be taken as recreational harvest. Bocaccio north of 40°30′ N lat. are included in the OY for minor shelf rockfish north (70 mt).

At its September 10–14, 2001, meeting in Portland, OR, the Council, in consultation with the State of California, recommended closure of the California recreational fisheries in Federal waters when the preseason estimates for recreational harvest are reached, following anticipated action by the California Fish and Game Commission (Commission) at its October 4–5, 2001, meeting to close California state waters.

Currently, recreational catches of both canary and bocaccio rockfish are projected to have exceeded their preseason estimates, based on estimates from the Marine Recreational Fisheries Statistical Survey (MRFSS) through June and on projections of total annual catch based on MRFSS 1999 and 2000 catch levels. The recreational catch of canary rockfish off of California was at 16 mt of the 22 mt preseason estimate through June 2001 and at 22 mt of the 44 mt preseason estimate coastwide. During the remainder of the year (July – December), the recreational fisheries north of Cape Mendocino are expected to stay within the preseason estimate of canary rockfish in that area (22 mt), but the California recreational fishery south of Cape Mendocino is projected to take another 45 mt of canary rockfish.

Bocaccio recreational catch approached the 52–mt preseason estimate in June, weighing in at 50 mt. If current regulations continue, the projected recreational catch alone of bocaccio could reach 111 mt by the end of 2001. By adding the estimated commercial catch of 30 mt through the end of the year, the total bocaccio catch could total 141 mt, 41 mt over the 100 mt OY.

As a result of projections that recreational harvest of canary rockfish and bocaccio will exceed the annual preseason estimates for these species, at its October 4–5, 2001, meeting in San Diego, CA, the Commission closed the California recreational fisheries for rockfish and lingcod (a co-occurring species) in California state waters from October 29 through December 31, 2001, and requested that NMFS also close Federal waters.

NMFS Actions

NMFS concurs with the Council's and the Commission's recommendations, and hereby announces closure of the recreational fisheries for rockfish and lingcod in Federal waters (3-200 miles offshore) south of 40°10′ N lat. and seaward of the 20–fathom (36.9–m) depth contour off the coast of California from October 29 through December 31, 2001. Fishing for minor nearshore rockfish inside the 20-fathom (36.9 m) depth contour south of 40°10′ N lat. remains open. However, retention of shelf rockfish (including bocaccio and canary rockfish) taken in this area is prohibited. Recreational fishing measures for the areas north of 40°10′ N lat. remain unchanged. (*NOTE*: The stock assessment areas for groundfish were modified in 2000 such that the ABCs and OYs apply to areas north and south of 40°30′ N lat. (Cape Mendocino) to better align with the trip limit areas and management actions that apply north and south of 40°10′ N lat.)

Accordingly, at 66 FR 2338, January 11, 2001, as subsequently amended, in Section IV, under D. Recreational Fishery, paragraphs (1)(a)(ii), (1)(a)(iii) and (1)(b)(i) are revised to read as follows:

IV. NMFS Actions

D. Recreational Fishery

* * * * *

(1) * * *

(a) * * *

(ii) *Seasons*. North of 40o10′ N lat., recreational fishing for rockfish is open from January 1 through December 31. South of 40°10′ N latitude and north of Point Conception (34°27′ N lat.), recreational fishing for rockfish is closed from March 1 through April 30. This area is also closed to recreational rockfish fishing from May 1 through June 30 and from October 29 through December 31, except that fishing for minor nearshore rockfish is permitted inside the 20–fathom (36.9–m) depth contour. South of Point Conception (34°27′ N lat.), recreational fishing for rockfish is closed from January 1 through February 28 and from October 29 through December 31., except that fishing for minor nearshore rockfish is permitted inside the 20–fathom (36.9–m) depth contour. Recreational fishing for cowcod is prohibited all year in all areas.

(iii) *Bag limits, boat limits, hook limits*. North of 40°10′ N lat., when the recreational fishery is open, there is a 2–hook limit per fishing line, and the bag limit is 10 rockfish per day, of which no more than 2 may be bocaccio and no more than 1 may be canary rockfish. South of 40°10′ N lat., in times and areas when the recreational season is open, there is a 2-hook limit per fishing line, and the bag limit is 10 rockfish per day. From October 29 through December 31, retention of shelf rockfish (including bocaccio and canary rockfish) is prohibited south of 40°10′ N lat. Cowcod retention is prohibited coastwide throughout 2001. [Note: California scorpionfish, *Scorpaena guttata*, are subject to California's 10–fish bag limit per species, but are not counted toward the 10-rockfish bag limit.] Multi-day limits are authorized by a valid permit issued by California and must not exceed the daily limit multiplied by the number of days in the fishing trip.

* * * * *

(1) * * *

(b) * * *

(i) *Seasons*. South of 40°10′ N lat. and north of Point Conception (34°27′ N lat.), recreational fishing for lingcod is closed from March 1 through June 30 and from October 29 through December 31. South of Point Conception (34°27′ N lat.), recreational fishing for lingcod is closed from January 1 through February 28 and from October 29 through December 31.

Classification

These actions are authorized by the regulations implementing the FMP and the annual specifications and management measures published at 66 FR 2338 (January 11, 2001), as amended at 66 FR 10208 (February 14, 2001), at 66 FR 18409 (April 9, 2001), at 66 FR 22467 (May 4, 2001), at 66 FR 28676 (May 24, 2001), at 66 FR 35388 (July 5, 2001), at 66 FR 38162 (July 23, 2001), and 66 FR 50851, (October 5, 2001) and are based on the most recent data available. The aggregate data upon which this action is based are available for public inspection at the Office of the Administrator, Northwest Region, NMFS (see **ADDRESSES**) during business hours.

NMFS finds good cause to waive the requirement to provide prior notice and comment on this action pursuant to 5 U.S.C. 553(b)(B), because providing prior notice and opportunity for comment would be impracticable. It would be impracticable because this action is necessary to protect overfished species that are managed under Council-approved rebuilding plans, and affording additional advance notice would reduce the agency's ability to protect those overfished species in a timely manner.

This action is taken under the authority of 50 CFR 660.323 (b)(2), and is exempt from review under Executive Order 12866.

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

Dated: October 25, 2001.

Bruce C. Morehead,

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

[FR Doc. 01–27274 Filed 10–25–01; 3:14 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 102401A]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Closure of the Commercial Red Snapper Component

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

ACTION: Closure.

SUMMARY: NMFS closes the commercial fishery for red snapper in the exclusive economic zone (EEZ) of the Gulf of Mexico. NMFS has determined that the fall portion of the annual commercial quota for red snapper will be reached at noon, local time, November 10, 2001. This closure is necessary to protect the red snapper resource.

EFFECTIVE DATES: Closure is effective at noon, local time, November 10, 2001, until noon, local time, on February 1, 2002.

FOR FURTHER INFORMATION CONTACT: Phil Steele, telephone 727–570–5305, fax 727–570–5583, e-mail *Phil.Steele@noaa.gov*.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council and approved and implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act by regulations at 50 CFR part 622. Those regulations set the commercial quota for red snapper in the Gulf of Mexico at 4.65 million lb (2.11 million kg) for the current fishing year, January 1 through December 31, 2001. The red snapper commercial fishing season is split into two time periods, the first commencing at noon on February 1 with two-thirds of the annual quota (3.10 million lb (1.41 million kg)) available, and the second commencing at noon on October 1 with the remainder of the annual quota available. During the commercial season, the red snapper commercial fishery opens at noon on the first of each month and closes at noon on the 10th of each month until the applicable commercial quotas are reached.

Under 50 CFR 622.43(a), NMFS is required to close the commercial fishery for a species or species group when the quota for that species or species group is reached, or is projected to be reached, by filing a notification to that effect in the **Federal Register**. Based on current statistics, NMFS has determined that the available commercial quota of 4.65 million lb (2.11 million kg) for red snapper for this fishing year will be reached when the fishery closes at noon, local time, November 10, 2001. Accordingly, the commercial fishery in the EEZ in the Gulf of Mexico for red snapper will remain closed until noon, local time, on February 1, 2002. The operator of a vessel with a valid reef fish permit having red snapper aboard must have landed and bartered, traded, or sold such red snapper prior to noon, local time, November 10, 2001.

During the closure, the bag and possession limits specified in 50 CFR 622.39 (b) apply to all harvest or possession of red snapper in or from the EEZ in the Gulf of Mexico, and the sale or purchase of red snapper taken from the EEZ is prohibited. In addition, the bag and possession limits for red snapper apply on board a vessel for which a commercial permit for Gulf reef fish has been issued, without regard to where such red snapper were harvested. However, the bag and possession limits for red snapper apply only when the recreational quota for red snapper has not been reached and the bag and possession limit has not been reduced to zero. The prohibition on sale or purchase does not apply to sale or purchase of red snapper that were harvested, landed ashore, and sold prior to noon, local time, November 10, 2001, and were held in cold storage by a dealer or processor.

Classification

This action is taken under 50 CFR 622.43(a) and is exempt from review under Executive Order 12866.

Dated: October 24, 2001.

Bruce C. Morehead,

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

[FR Doc. 01–27310 Filed 10–29–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 102201F]

Fisheries of the Northeastern United States; Atlantic Surf Clam and Ocean Quahog Fishery; Suspension of Minimum Surf Clam Size for 2002

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

ACTION: Suspension of surf clam minimum size limit.

SUMMARY: NMFS suspends the minimum size limit of 4.75 inches (12.07 cm) for Atlantic surf clams for the 2002 fishing year. This action is taken under the authority of the implementing regulations for this fishery, which allow for the annual suspension of the minimum size limit based upon set criteria. The intended effect is to relieve the industry from a regulatory burden that is not necessary, as the majority of surf clams harvested are larger than the minimum size limit.

DATES: Effective January 1, 2002, through December 31, 2002.

FOR FURTHER INFORMATION CONTACT: Walter J. Gardiner, Fishery Management Specialist, 978–281–9326.

SUPPLEMENTARY INFORMATION: Section 648.72(c) of the regulations implementing the Fishery Management Plan (FMP) for the Atlantic Surf Clam and Ocean Quahog Fisheries allows the Administrator, Northeast Region, NMFS (Regional Administrator) to suspend annually, by publication of a notification in the **Federal Register**, the minimum size limit for Atlantic surf clams. This action may be taken unless discard, catch, and survey data indicate that 30 percent of the Atlantic surf clam resource is smaller than 4.75 inches (12.07 cm) and the overall reduced size is not attributable to harvest from beds where growth of the individual clams has been reduced because of density-dependent factors.

At its July 2001, meeting, the Mid-Atlantic Fishery Management Council (Council) voted to recommend that the

Regional Administrator suspend the minimum size limit. Commercial surf clam shell length data for 2001 was analyzed using modified procedures from what was used in 1999 and 2000. The analysis indicated that between 2.1 to 22.2 percent of the samples taken overall were composed of surf clams that were less than 4.75 inches (12.07 cm). Based on these data, the Regional Administrator adopts the Council's recommendation and suspends the minimum size limit for Atlantic surf clams from January 1, 2002, through December 31, 2002.

Classification

This action is authorized by 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: October 24, 2001.

Bruce C. Morehead,

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

[FR Doc. 01–27312 Filed 10–29–01; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 66, No. 210
Tuesday, October 30, 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–NM–155–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B19 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 Bombardier Model CL–600–2B19 series airplanes. This proposal would require repetitive inspections for cracking of the left and right lower wing planks, and repair, if necessary. This action is necessary to find and fix such cracking, which could result in reduced structural integrity of the wing. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by November 29, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–155–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–155–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 Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Serge Napoleon, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7512; fax (516) 568–2716.

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–155–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–155–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on certain Bombardier Model CL–600–2B19 series airplanes. TCCA advises that cracks have been found on the left and right lower wing planks on several airplanes. The cracks were located aft of the rear spar, near the jacking pads, in line with wing station (WS) 148.019. The cause of the cracks has not been determined. This condition, if not corrected, could result in reduced structural integrity of the wing.

Explanation of Relevant Service Information

Bombardier has issued Alert Service Bulletin A601R–57–031, Revision ''A,'' including Appendix A, dated March 28, 2001. That service bulletin describes procedures for repetitive external detailed visual inspections for cracking of the left and right lower wing planks in the area of the rear spar and WS 148.019. TCCA classified this service bulletin as mandatory and issued Canadian airworthiness directive CF–2001–15, dated March 30, 2001, in order to assure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

This airplane model is manufactured in Canada 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, TCCA has kept the FAA informed of the situation described above. The FAA has

examined the findings of TCCA, 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 service bulletin described previously, except as discussed below. The proposed AD also would require that operators report inspection findings to Bombardier.

Interim Action

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

Differences Between Proposed Rule, Foreign AD, and Service Bulletin

Operators should note that, although the service bulletin and TCCA airworthiness directive specify that the manufacturer may be contacted for repair instructions, this proposal would require repairs to be accomplished per a method approved by either the FAA or TCCA (or its delegated agent). In light of the type of repair that would be required to address the identified unsafe condition, and in consonance with existing bilateral airworthiness agreements, the FAA has determined that, for this proposed AD, a repair approved by either the FAA or TCCA would be acceptable for compliance with this proposed AD.

Cost Impact

The FAA estimates that 214 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 inspections, 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 $12,840, or $60 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the 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:

Bombardier, Inc. (Formerly Canadair): Docket 2001–NM–155–AD.

Applicability: Model CL–600–2B19 series airplanes, serial numbers 7003 through 7999 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 (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To find and fix cracking of the left and right lower wing planks, which could result in reduced structural integrity of the wing, accomplish the following:

Repetitive Inspections

(a) Perform an external detailed visual inspection for cracking of the left and right lower wing planks in the area of the rear spar and wing station 148.019, according to Part 2, Accomplishment Instructions, of Bombardier Alert Service Bulletin A601R–57–031, Revision ''A,'' including Appendix A, dated March 28, 2001. Do the initial inspection at the time shown in paragraph (a)(1), (a)(2), or (a)(3) of this AD, as applicable; and repeat the inspection at least every 5,000 flight cycles.

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.''

Compliance Times for Inspection

(1) For airplanes that have accumulated 6,500 total flight cycles or less as of the effective date of this AD: Inspect prior to the accumulation of 7,000 total flight cycles.

(2) For airplanes that have accumulated 6,501 total flight cycles, but fewer than 13,500 total flight cycles, as of the effective date of this AD: Inspect prior to the accumulation of 13,700 total flight cycles, or within 500 flight cycles after the effective date of this AD, whichever occurs first.

(3) For airplanes that have accumulated 13,500 total flight cycles or more as of the effective date of this AD: Inspect within 200 flight cycles after the effective date of this AD.

Note 3: Inspections accomplished prior to the effective date of this AD in accordance with Bombardier Alert Service Bulletin A601R–57–031, dated March 22, 2001, are considered acceptable for compliance with paragraph (a) of this AD.

Note 4: There is no terminating action available at this time for the repetitive inspections required by paragraph (a) of this AD.

Repair

(b) If any crack is found during any inspection according to paragraph (a) of this

AD: Before further flight, repair per a method approved by either the Manager, New York Aircraft Certification Office (ACO), FAA; or Transport Canada Civil Aviation (or its delegated agent).

Reporting Requirement

(c) Submit a report of inspection findings (both positive and negative) to Bombardier Aerospace Technical Help Desk, fax (514) 855–8500, at the applicable time specified in paragraph (c)(1) or (c)(2) of this AD. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) For airplanes on which the inspection is accomplished after the effective date of this AD: Submit the report within 30 days after performing the inspection required by paragraph (a) of this AD.

(2) For airplanes on which the inspection has been accomplished prior to the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York ACO. 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 5: 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

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

Note 6: The subject of this AD is addressed in Canadian airworthiness directive CF–2001–15, dated March 30, 2001.

Issued in Renton, Washington, on October 24, 2001.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–27216 Filed 10–29–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–93–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777–200 Series Airplanes Equipped With General Electric Engines

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 Boeing Model 777–200 series airplanes equipped with General Electric engines. This proposal would require installation of a high-temperature silicone foam seal on the aft fairing of the strut. This action is necessary to prevent primary engine exhaust from entering the aft fairing of the strut, elevating the temperature in the aft fairing of the strut, and creating a potential source of ignition, which could lead to an uncontrolled fire in the aft fairing of the strut. Such a fire would expose the wing fuel tank to high-temperature gasses and flames and result in a potential ignition source for the fuel tank, and reduced structural integrity of the wing. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by December 14, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–93–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–93–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: John Vann, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1024; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NM–93–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–93–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports that, during routine inspections of the aft fairing of the strut, evidence of an elevated temperature in the interior cavity of the aft fairing has been found on several Boeing Model 777–200 series airplanes equipped with General Electric engines. The evidence includes charred seals, soot build-up, and discoloration. Investigation revealed that primary engine exhaust entering through a gap in the heat shield of the aft fairing of the strut elevates the temperature in the aft fairing. The aft fairing of the strut is a flammable leakage zone. An elevated temperature in this area would create a potential source of ignition, and an ignition source is not allowed to exist in a flammable leakage zone because there is no provision for detecting or extinguishing a fire in these zones. A potential source of ignition due to an elevated temperature in the aft fairing of the strut, if not corrected, could result in an uncontrolled fire in the aft fairing of the strut. Such a fire would expose the wing fuel tank to high-temperature gasses and flames and result in a potential ignition source for the fuel tank, and reduced structural integrity of the wing.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 777–54A0015, dated January 18, 2001, which describes procedures for installation of a high-temperature silicone foam seal to fill the gap in the heat shield of the aft fairing of the strut on the left- and right-hand sides of the airplane. The procedures involve removing certain heat shield castings for the aft fairing of the strut, cleaning the area, bonding a foam seal to the upper surface of the heat shield cover plates, re-installing the heat shield castings, restoring the leveling compound and seal application, and doing a leak check of the aft fairing.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Difference Between Proposed AD and Service Bulletin

The referenced service bulletin states that all actions for which the Boeing 777 Airplane Maintenance Manual (AMM) is specified as the appropriate source of service information for work instructions may instead be done according to an ''operator's equivalent procedure.'' However, the FAA finds that Chapter 54–55–01 of the AMM must be used to accomplish the leak check of the aft fairing of the strut, which is specified in the Work Instructions in the service bulletin. For this leak check, an ''operator's equivalent procedure'' may be used only if approved as an alternative method of compliance per paragraph (c) of this AD.

Interim Action

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

Cost Impact

There are approximately 97 airplanes of the affected design in the worldwide fleet. The FAA estimates that 18 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 15 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $16,200, or $900 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 2001–NM–93–AD.

Applicability: Model 777–200 series airplanes equipped with General Electric engines, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent primary engine exhaust from entering the aft fairing of the strut, elevating the temperature in the aft fairing of the strut, and creating a potential source of ignition, which could lead to an uncontrolled fire in the aft fairing of the strut and exposure of the wing fuel tank to high-temperature gasses and flames, and result in a potential ignition source for the fuel tank and reduced structural integrity of the wing, accomplish the following:

Installation of Seal

(a) Within 1,000 flight hours after the effective date of this AD, install a high-temperature silicone foam seal to fill the gap in the heat shield of the aft fairing of the strut on the left- and right-hand sides of the airplane. Do the installation according to Boeing Alert Service Bulletin 777–54A0015, dated January 18, 2001, except as provided by paragraph (b) of this AD. (Procedures for the installation include removing certain heat shield castings for the aft fairing of the strut, cleaning the area, bonding a foam seal to the upper surface of the heat shield cover plates, re-installing the heat shield castings, restoring the leveling compound and seal application, and doing a leak check of the aft fairing.)

"Operator's Equivalent Procedure"

(b) Though Boeing Alert Service Bulletin 777–54A0015, dated January 18, 2001, specifies that an "operator's equivalent procedure" may be used for the leak check described in the service bulletin, that leak check must be done according to Chapter 54–55–01 of the Boeing 777 Airplane Maintenance Manual, as specified in the service bulletin.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Issued in Renton, Washington, on October 23, 2001.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–27189 Filed 10–29–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–377–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes. This proposal would require repetitive inspections for cracking of the skin, bear strap, and sill chord of the lower lobe cargo door cutout, and repair, if necessary. This proposal also provides, for certain airplanes, an optional modification of the lower lobe cargo door cutout, which ends the pre-modification repetitive inspections, but would necessitate new post-modification repetitive inspections after a certain time. This action is necessary to find and fix cracking of the skin, bear strap, and sill chord of the lower lobe cargo door cutout, which could lead to reduced structural integrity of the lower lobe cargo door cutout, and result in rapid depressurization of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by December 14, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–377–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain "Docket No. 2000–NM–377–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: 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:

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–377–AD." The postcard will be date-stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–377–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports indicating that cracking has been found in the upper corners of the lower lobe cargo door cutout on certain Boeing Model 747 series airplanes. Fatigue cracking of the skin, bear strap, and sill chord of the cargo door initiates at the fuselage skin fastener holes common to the hinge fairing strip. Such cracking, if not corrected, could lead to reduced structural integrity of the lower lobe cargo door cutout, and result in rapid depressurization of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–53A2448, including Appendix A, dated September 28, 2000, which describes procedures for repetitive detailed visual and high frequency eddy current inspections for cracking of the skin, bear strap, and sill chord of the lower lobe cargo door cutout. If any cracking is found, the service bulletin specifies to contact the airplane manufacturer for repair instructions. For airplanes with no cracking and with adequate edge margins, the service bulletin also describes procedures for an optional modification of the lower lobe cargo door cutout. The optional modification involves removal of the hinge fairing and its fasteners, oversizing fastener holes, and replacing existing fasteners and the grounding strap with new fasteners and a new strap. Accomplishment of this optional modification eliminates the need to do the repetitive inspections described previously. However, Figure 5 of the service bulletin describes procedures for new post-modification repetitive detailed visual and high frequency eddy current inspections for cracking of the skin adjacent to the lower lobe cargo door cutout. If the optional modification is done, the post-modification inspections are eventually necessary. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between Proposed AD and Service Bulletin

Operators should note that, although the service bulletin specifies that the manufacturer may be contacted for disposition of repairs, this proposed AD would require all repairs to be accomplished per a method approved by the FAA, or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle Aircraft Certification Office, to make such findings.

Operators should note that the requirements of this proposed AD would apply only to airplanes with line numbers 1 through 1255 inclusive, as listed in Group 1 in the service bulletin. Airplanes with line numbers 1256 through 1297 inclusive, which are identified as Group 2 in the service bulletin, have cold-worked fastener holes near the edge of the skin panel at the upper corners of the door cutout. Thus, they are not as susceptible to the fatigue cracking addressed by this proposed AD. (Airplanes with line numbers 1298 and subsequent have a redesigned skin panel and increased edge margin at fastener locations. These airplanes are also not subject to the unsafe condition addressed by this proposed AD.)

Cost Impact

There are approximately 1,129 airplanes of the affected design in the worldwide fleet. The FAA estimates that 275 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours 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 this proposed inspection on U.S. operators is estimated to be $49,500, or $180 per airplane, per inspection cycle.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 2000–NM–377–AD.

Applicability: Model 747 series airplanes, line numbers 1 through 1255 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 (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or

repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To find and fix cracking of the skin, bear strap, and sill chord of the lower lobe cargo door cutout, which could lead to reduced structural integrity of the lower lobe cargo door cutout, and result in rapid depressurization of the airplane, accomplish the following:

Repetitive Inspections

(a) Perform detailed visual and high frequency eddy current inspections to find cracking of the skin, bear strap, and sill chord at the upper aft and forward corners of the lower lobe cargo door cutout, according to Boeing Alert Service Bulletin 747–53A2448, including Appendix A, dated September 28, 2000. Do the initial inspections at the time shown in paragraph (a)(1) or (a)(2) of this AD, as applicable, and repeat the inspections at least every 3,000 flight cycles until paragraph (c) of this AD is accomplished.

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.''

(1) For airplanes with fewer than 13,000 total flight cycles as of the effective date of this AD: Do the inspection prior to the accumulation of 13,000 total flight cycles or within 1,000 flight cycles after the effective date of this AD, whichever is later.

(2) For airplanes with 13,000 or more total flight cycles as of the effective date of this AD: Do the inspection within 1,000 flight cycles or 1 year after the effective date of this AD, whichever is first.

Repair

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

Optional Modification

Note 3: If edge margin distance is outside the limits specified in Figure 4 of Boeing Alert Service Bulletin 747–53A2448, including Appendix A, dated September 28, 2000, no modification is available.

(c) If no crack is found during any inspection required by paragraph (a) of this AD, AND edge margin distance is within the limits specified in Figure 4 of Boeing Alert Service Bulletin 747–53A2448, including Appendix A, dated September 28, 2000: Do paragraphs (c)(1) and (c)(2) of this AD.

(1) Do the optional modification of the lower lobe cargo door cutout (including removing the hinge fairing and its fasteners, oversizing fastener holes, and replacing existing fasteners with new fasteners and the grounding strap with a new strap) described in the service bulletin. Such modification ends the repetitive inspections required by paragraph (a) of this AD.

(2) Within 16,000 flight cycles after doing the modification in paragraph (c)(1) of this AD, perform detailed visual and high frequency eddy current inspections to find cracking of the skin at the upper aft and forward corners of the lower lobe cargo door cutout, according to Figure 5 of Boeing Alert Service Bulletin 747–53A2448, including Appendix A, dated September 28, 2000. Repeat these inspections at least every 3,000 flight cycles.

Alternative Methods of Compliance

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

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

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

Issued in Renton, Washington, on October 23, 2001.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–27190 Filed 10–29–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NE–33–AD]

RIN 2120–AA64

Airworthiness Directives; General Electric Company (GE) CF6–45 and CF6–50 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) proposes to adopt a new airworthiness directive (AD) that is applicable to GE CF6–45 and CF6–50 series turbofan engines. This proposal would require a reduction of the cyclic life limit for certain low pressure turbine rotor (LPTR) stage 2 disks, and would require removing certain LPTR stage 2 disks from service before exceeding the new, lower cyclic life limit. In addition, the proposal would require removing from service certain LPTR stage 2 disks that currently exceed, or will exceed, the new, lower cyclic life limit according to the compliance schedule described in this proposal. This proposal is prompted by a report of a cracked LPTR stage 2 disk found during a visual inspection. The actions specified by the proposed AD are intended to prevent an uncontained engine failure and damage to the airplane, resulting from cracks in the LPTR stage 2 disk.

DATES: Comments must be received by December 31, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–NE–33–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected, by appointment, at this location between 8 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.

FOR FURTHER INFORMATION CONTACT: Ann Mollica, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7740; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

proposals contained in this action may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NE–33–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. 2001–NE–33–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

An LPTR stage 2 disk cracked in the forward slot area was discovered during a shop visit visual inspection. The manufacturer has determined that the crack is a result of low cycle fatigue failure. As a result, the manufacturer has reevaluated the 15,500 cycles-since-new (CSN) cyclic life limit for LPTR stage 2 disks part numbers (P/N's) 9061M22P08 and 9061M22P10, and has recalculated the cyclic life limit. This proposal would establish a new, lower cyclic life limit of 10,400 CSN for LPTR stage 2 disks P/N's 9061M22P08 and 9061M22P10 and would require removing certain LPTR stage 2 disks from service before exceeding the new, lower cyclic life limit. In addition, the proposal would require removing from service certain LPTR stage 2 disks that currently exceed, or will exceed, the new, lower cyclic life limit according to a compliance schedule based on accumulated cycles on the disk on the effective date of the AD. The compliance schedule is established on the basis of a risk analysis that the FAA has reviewed. The FAA has determined that the compliance schedule based on that risk analysis establishes an acceptable level of safety for those disks operated beyond the new life limit. The actions specified by the proposed AD are intended to prevent an uncontained engine failure and damage to the airplane, resulting from cracks in the LPTR stage 2 disk.

FAA's Determination of an Unsafe Condition and Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other GE CF6–45 and CF6–50 series turbofan engines of the same type design, the proposed AD would establish a new, lower cyclic life limit of 10,400 CSN for LPTR stage 2 disks P/N's 9061M22P08 and 9061M22P10 and would require removing certain LPTR stage 2 disks from service before exceeding the new, lower cyclic life limit. In addition, the proposal would require removing from service certain LPTR stage 2 disks that currently exceed, or will exceed, the new, lower cycle life limit according to a compliance schedule based on accumulated cycles on the disk on the effective date of this AD.

Economic Analysis

There are approximately 1,376 GE CF6–45 and CF6–50 series turbofan engines of the affected design in the worldwide fleet. The FAA estimates that 664 engines installed on airplanes of U.S. registry would be affected by this proposed AD. The proposed action does not impose any additional labor costs. A new disk would cost approximately $72,870 per engine. Based on these figures, and on the prorating for the usage of the disks, the cost effect of the proposed AD on U.S. operators is estimated to be $10,385,724.

Regulatory Analysis

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:

General Electric Company: Docket No. 2001–NE–33–AD.

Applicability: This airworthiness directive (AD) is applicable to General Electric Company (GE) CF6–45 and CF6–50 series turbofan engines. These engines are installed on, but not limited to, Airbus Industrie A300 series, Boeing 747 series, and McDonnell Douglas DC–10 series airplanes.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (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: Compliance with this AD is required as indicated, unless already done.

To prevent an uncontained engine failure and damage to the airplane, resulting from cracks in the low pressure turbine rotor (LPTR) stage 2 disk, do the following:

(a) Remove from service LPTR stage 2 disks, part numbers (P/N's) 9061M22P08 and 9061M22P10 in accordance with Table 1 as follows:

TABLE 1.—LPTR STAGE 2 DISK REMOVAL SCHEDULE

If disk cycles-since-new (CSN) on the effective date of this AD are:	Then remove disk:
(1) Fewer than 5,300 CSN	Before exceeding 10,400 CSN.
(2) 5,300 CSN or more, but fewer than 10,400 CSN	Within 5,100 additional cycles-in-service from the effective date of this AD.
(3) 10,400 CSN or more	At next LPTR stage 2 disk exposure, or by 15,500 CSN, whichever occurs earlier.

(b) After the effective date of this AD, do not install any LPTR stage 2 disk, P/N 9061M22P08 or 9061M22P10, that has 10,400 or more CSN into an engine.

(c) Except for as provided in paragraph (a) of this AD, this action establishes a new, cyclic life limit of 10,400 CSN for LPTR stage 2 disk, P/N 9061M22P08 and 9061M22P10, which is published in Chapter 05–10–00 of CF6–45 and CF6–50 Engine Shop Manual, GEK 50481.

Definition

(d) For the purpose of this AD, LPTR stage 2 disk exposure is defined as disassembly and removal of the LPTR stage 2 disk from the LPTR structure, regardless of whether any blades, bolts, nuts, bolt retainers, blade retainers, blade inserts, balance weights, wear strips, or seals remain assembled to the disk.

Alternative Methods of Compliance

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

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

Special Flight Permits

(f) 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 done.

Issued in Burlington, Massachusetts, on October 22, 2001.

Thomas Boudreau,

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

[FR Doc. 01–27191 Filed 10–29–01; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–129–1–7471b; FRL–7091–4]

Approval and Promulgation of Implementation Plans; Texas; Control of Air Pollution From Volatile Organic Compounds, Solvent Using Processes, Surface Coating Processes, Aerospace Manufacturing and Rework Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to take direct final action on revisions to the Texas State Implementation Plan (SIP). These revisions concern Control of Air Pollution from Volatile Organic Compounds (VOC), Solvent Using Processes, Surface Coating Processes, Aerospace Manufacturing and Rework Operations. The EPA is proposing to approve these revisions to regulate emissions of VOCs as meeting the Reasonably Available Control Technology (RACT) requirements in accordance with the requirements of the Federal Clean Air Act. The EPA is also proposing to remove three site-specific alternate RACT determinations from the Texas SIP and replacing them with the VOC revisions.

In the ''Rules and Regulations'' section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the EPA views this as a noncontroversial revision and anticipates no adverse comment. The EPA has explained its reasons for this approval in the preamble to the direct final rule. If EPA receives no relevant adverse comments, the EPA will not take further action on this proposed rule. If EPA receives relevant adverse comment, EPA will withdraw the direct final rule and it will not take effect. The EPA will address all public comments in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Our Technical Support Document for this rule revision contains more information about this action.

DATE: Written comments must be received by November 29, 2001.

ADDRESSES: Written comments should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD–L), at the EPA Region 6 Office listed below. Copies of documents relevant to this action are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Dallas, Texas 75202–2733.

Texas Natural Resource Conservation Commission, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Shar, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–6691.

SUPPLEMENTARY INFORMATION: This document concerns Control of Air Pollution from VOC, Solvent Using Processes, Surface Coating Processes, Aerospace Manufacturing and Rework Operations. For further information, please see the information provided in the direct final action that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

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

Dated: October 10, 2001.

Gregg A. Cooke,

Regional Administrator, Region 6.

[FR Doc. 01–27108 Filed 10–29–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[Region II Docket No. PR6–233b; FRL–7093–8]

Approval and Promulgation of State Plans for Designated Facilities; Puerto Rico

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a negative declaration submitted by the Commonwealth of Puerto Rico. The negative declaration satisfies EPA's promulgated Emission Guidelines (EG) for existing small municipal waste combustion (MWC) units. In accordance with the EG, states are not required to submit a plan to implement and enforce the EG if there are no existing small MWC units in the state and it submits a negative declaration letter in place of the State Plan.

DATES: Written comments must be received on or before November 29, 2001.

ADDRESSES: All comments should be addressed to: Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region II Office, 290 Broadway, New York, New York 10007–1866.

A copy of the Commonwealth submittal is available for inspection at the Region 2 Office in New York City. Those interested in inspecting the submittal must arrange an appointment in advance by calling (212) 637–4249. Alternatively, appointments may be arranged via e-mail by sending a message to Ted Gardella at *Gardella.Anthony@epa.gov.* The office address is 290 Broadway, Air Programs Branch, 25th Floor, New York, New York 10007–1866.

A copy of the Commonwealth submittal is also available for inspection at the respective offices:

Puerto Rico Environmental Quality Board, National Plaza Building, 431 Ponce De Leon Avenue, Hato Rey, Puerto Rico 00917.

Environmental Protection Agency, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Ted Gardella, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, telephone, (212) 637–4249.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is located in the Rules section of this **Federal Register**.

The Environmental Protection Agency (EPA) is proposing to approve a negative declaration submitted by the Commonwealth of Puerto Rico on August 2, 2001. The negative declaration officially certifies to EPA that, to the best of the Commonwealth's knowledge, there are no small municipal waste combustion units in operation in the Commonwealth of Puerto Rico. This negative declaration concerns existing small municipal waste combustion units throughout the Commonwealth of Puerto Rico. The negative declaration satisfies the federal Emission Guidelines (EG) requirements of EPA's promulgated regulation entitled ''Emission Guidelines for Existing Small Municipal Waste Combustion Units'' (65 FR 76378, December 6, 2000).

Dated: October 19, 2001.

William J. Muszynski,

Acting Regional Administrator, Region 2.

[FR Doc. 01–27284 Filed 10–29–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[WI; FRL–7094–4]

Clean Air Act Proposed Full Approval Of Operation Permits Program; WI

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to fully approve the Wisconsin title V Federal Operation Permits Program, submitted by Wisconsin pursuant to subchapter V of the Clean Air Act, which requires states to develop, and to submit to EPA for approval, programs for issuing operation permits to all major stationary sources and to certain other sources.

DATES: EPA must receive comments on this proposed action on or before November 21, 2001.

ADDRESSES: Comments should be addressed to: Robert Miller, Chief, Permits and Grants Section, at the address noted below. Copies of the state's submittal and other supporting information used in developing the proposed approval are available for inspection during normal business hours at the following location: EPA Region 5, 77 West Jackson Boulevard, AR–18J, Chicago, Illinois, 60604. Please contact Beth Valenziano at (312) 886–2703 or Susan Siepkowski at (312) 353–2654 to arrange a time to inspect the submittal.

FOR FURTHER INFORMATION CONTACT: Beth Valenziano or Susan Siepkowski, AR–18J, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone Numbers: (312) 886–2703/353–2654 (respectively), e-mail addresses: *valenziano.beth@epa.gov* or *siepkowski.susan@epa.gov.*

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

What is being addressed in this document?
What are the program changes that EPA proposes to approve?
What is involved in this proposed action?

What Is Being Addressed in This Document?

As required under Subchapter V of the Clean Air Act (''the Act''), EPA has promulgated regulations that define the minimum elements of an approvable state operation permits program and the corresponding standards and procedures by which the EPA will approve, oversee, or withdraw approval of the state programs (see 57 FR 32250 (July 21, 1992)). These regulations are codified at 40 Code of Federal Regulations (CFR) part 70. Pursuant to Subchapter V of the Act, generally known as title V, and the implementing regulations, states developed, and submitted to EPA, programs for issuing operation permits to all major stationary sources and to certain other sources. Where a program substantially, but not fully, met the requirements of part 70, EPA granted the program interim approval. If EPA has not fully approved a program by the expiration of its interim approval period, EPA must establish and implement a federal program under 40 CFR part 71 in that state.

EPA promulgated final interim approval of the Wisconsin title V program on March 6, 1995 (60 FR 12128), and the program became effective on April 5, 1995.

Wisconsin submitted revisions to its title V program for EPA approval on March 28, 2001, and submitted supplemental packages on September 5, 2001 and September 17, 2001. The submittals included corrections to the interim approval issues identified in the March 6, 1995 interim approval action and additional program revisions and updates.

What Are the Program Changes That EPA Proposes To Approve?

A. Title V Interim Approval Corrections

In the March 6, 1995 action, EPA identified eight interim approval issues. The following is a description of the issues and their subsequent resolution.

1. Criminal Fines

Wisconsin's operation permit program regulations did not provide for criminal fines against any person who knowingly makes any false material statement, representation, or certification in a permit application, as required by 40 CFR 70.11(a)(3)(iii). To correct this program deficiency, the Wisconsin Department of Natural Resources (WDNR) created section Natural Resources (s. NR) 407.05(10), Wisconsin Administrative Code (Wis. Adm. Code), to require all material statements, representations, and certifications in a permit application to be truthful. This provision is in turn subject to the state's criminal enforcement authority, section (s.) 285.87(2), Wisconsin Statutes (Wis. Stats.) [s. 144.426(2)(a) [1]], which provides criminal penalty authority for violations of state regulations. Wisconsin's revised Attorney General's opinion of January 5, 2001, Section XIX, confirms the state's authority to impose criminal fines for false statements in permit applications.

2. Application Shield for New and Modified Sources

40 CFR 70.7(b) requires that the application shield must apply to all part 70 sources that meet the application shield requirements. The following Wisconsin legislation and regulations did not provide an application shield for ''new'' and ''modified sources'' (as defined by ss. 285.01(27) and (29), Wis. Stats. [ss.144.30(20s) and (20e)]): s. 285.60(1)(b), Wis. Stats. [s.144.391(1)(b)]; s. 285.62(8), Wis. Stats. [s.144.3925(7)]; s. NR 407.06(2), Wis. Adm. Code; and s. NR 407.08, Wis. Adm. Code.

To correct these program deficiencies, the state amended the four provisions to provide the application shield to new and modified sources. Wisconsin amended s. 285.60(1)(b), Wis. Stats. [s. 144.391(1)(b)], to include the reference to the application shield provision in s. 285.62(8), Wis. Stats. [s. 144.3925(7)]. The state corrected the application shield provision in s. 285.62(8), Wis. Stats. [s. 144.3925(7)], by replacing the term ''existing source'' with ''stationary source'', which encompasses new, modified, and existing sources. Wisconsin also revised s. NR 407.06(2), Wis. Adm. Code, by replacing the term ''existing source'' with ''stationary source''. Finally, the state corrected s. NR 407.08(2) by referencing the application shield provisions in s. 285.62(8), Wis. Stats., [s. 144.3925(7)] for new and modified sources. Wisconsin's revised Attorney General's opinion, Section XX, confirms the state's authority to provide an application shield for new and modified sources.

3. Operational Flexibility for New and Modified Sources

The following legislation and regulation did not provide for operational flexibility, as required by 40 CFR 70.4(b)(12)(i), for ''new'' and ''modified sources'': s. 285.60(4), Wis. Stats. [s.144.391(4m)]; and s. NR 407.025, Wis. Adm. Code. 40 CFR 70.4(b)(12)(i) must apply to all part 70 sources. To correct these program deficiencies, the state revised s. 285.60(4), Wis. Stats. [s. 144.391(4m)], and s. NR 407.025, Wis. Adm. Code., by replacing the term ''existing source'' with ''stationary source''. The term stationary source encompasses new, modified, and existing sources. Wisconsin's revised Attorney General's opinion, Section XIII, confirms the state's authority to provide operational flexibility for new and modified sources.

4. Authority To Deny a Renewal Application for a Noncomplying Source

40 CFR 70.6(a)(6)(i) requires that any permit noncompliance is grounds for denial of a permit renewal application. Wisconsin's legislation and regulations did not provide the authority to deny a renewal application for a source that is not in compliance. To correct this deficiency, Wisconsin added s. 285.66(3)(c), Wis. Stats, [s. 144.396(3)(c)] to provide the authority to deny a renewal application for a noncomplying source. The WDNR also revised s. NR 407.09(1)(f)1, Wis. Adm. Code, to state that noncompliance with an operation permit is grounds for denial of a permit renewal application. Wisconsin's revised Attorney General's opinion, Section IV, confirms the state's authority to deny a renewal application for a noncomplying source.

5. Reopening for Cause

40 CFR 70.7(f)(1) establishes the conditions under which reopening a permit for cause is mandatory. Wisconsin's regulations, ss. NR 407.14(1)(b), (c), (d), and (h), Wis. Adm. Code, allowed discretion in triggering the permit reopening for cause provisions. To correct these deficiencies, WDNR revised s. NR 407.14 to require the department to reopen a permit for cause pursuant to the conditions in 40 CFR 70.7(f)(1). The requirement for reopening the acid rain portion of the permit (40 CFR 70.7(f)(1)(ii)) is contained in the state's acid rain rule, under s. NR 409.12(6). The state regulations also retain discretionary reopening for cause authority for conditions beyond those required by 40 CFR 70.7(f)(1). Wisconsin's revised Attorney General's opinion, Sections XI and XV, confirms the state's authority for permit reopenings.

6. Duty To Supplement or Correct Applications

Wisconsin's regulations, s. NR 407.05, Wis. Adm. Code, did not include the duty to supplement or correct application provisions, as required under 40 CFR 70.5(b). To correct this deficiency, WDNR added these application requirements to s. NR 407.05(9), Wis. Adm. Code. Wisconsin's revised Attorney General's opinion, Section XII, confirms the duty to supplement or correct applications.

7. Permit Requirements for New and Modified Noncomplying Sources

Wisconsin had numerous statutory and regulatory deficiencies related to the lack of authority to issue operation permits to new and modified part 70 sources that are not in compliance. Wisconsin's revised Attorney General's opinion, Section III, addresses all of the following new and modified noncomplying source permit requirements. First, 40 CFR 70.3(a) requires that the permitting agency must have authority to issue permits to all part 70 sources. S. 285.64(1)(a), Wis. Stats. [s.144.3935(1)(a)], did not provide WDNR the authority to issue operation permits to ''new'' and ''modified'' part 70 sources that are not in compliance. Wisconsin corrected this deficiency by replacing the term ''existing source'' with ''stationary source'' in s. 285.64(1)(a), Wis. Stats. [s. 144.3935(1)(a)]. The term stationary source encompasses new, modified, and existing sources.

Second, 40 CFR 70.5(c)(8)(ii)(C) includes specific compliance plan

[1] Since EPA promulgated interim approval of Wisconsin's operation permit program, the state recodified the environmental chapters of the Wisconsin statutes. This recodification became effective on January 1, 1997. To address the recodification, this proposal references the current Wisconsin statutory citations, but acknowledges the old citations (which were in effect when EPA granted Wisconsin interim approval) in brackets.

application requirements for all part 70 sources that are not in compliance. S. NR 407.05(4)(h)2.c., Wis. Adm. Code, did not provide that compliance plan application requirements for noncomplying new and modified sources include a narrative description of how the sources will achieve compliance. Wisconsin corrected this deficiency by replacing the term ''existing source'' with ''stationary source'' in s. NR 407.05(4)(h)2.c, Wis. Adm. Code.

Third, 40 CFR 70.5(c)(8)(iii)(C) requires schedules of compliance in all noncomplying part 70 source applications. S. NR 407.05(4)(h)3.c., Wis. Adm. Code, did not provide for schedule of compliance application requirements for noncomplying new and modified sources. Wisconsin corrected this deficiency by removing the term ''for existing sources'' in s. NR 407.05(4)(h)3.c, Wis. Adm. Code. The provision now applies to all noncomplying sources.

Fourth, 40 CFR 70.5(c)(8)(iv) requires progress report schedules in all noncomplying part 70 source applications. S. NR 407.05(4)(h)4, Wis. Adm. Code, did not provide for progress report application requirements for noncomplying new and modified sources. Wisconsin corrected this deficiency by replacing the term ''existing sources'' with ''stationary sources'' in s. NR 407.05(4)(h)4., Wis. Adm. Code.

Fifth, 40 CFR 70.6(c)(3) and (4) require schedule of compliance and progress report requirements in all part 70 permits that are issued to noncomplying sources. S. NR 407.09(4)(b), Wis. Adm. Code, did not provide for schedule of compliance and progress report requirements in permits issued to noncomplying new and modified sources. Wisconsin corrected this deficiency by replacing the term ''existing sources'' with ''stationary sources'' in s. NR 407.09(4)(b), Wis. Adm. Code.

8. Source Exemptions

A ''major source,'' as defined at 40 CFR 70.2, among other things, is a source whose potential to emit is above specific emission threshold levels. A source can avoid major source status by accepting limits on its potential to emit.

As discussed in the March 6, 1995 final interim approval, ss. NR 407.03(1)(d), (g), (h), (o), (s), and (sm) exempted certain sources from permitting requirements without providing adequate procedures to limit their potential to emit [2]. In addition, s. NR 407.03(1)(t), Wis. Adm. Code, potentially exempted certain major part 70 sources from the program, depending on the type of source. Therefore, s. NR 407.03(1)(d), (g), (h), (o), (s), (sm), and (t) improperly limited WDNR's ability to permit all major sources, as required by 40 CFR 70.3.

The WDNR corrected ss. NR 407.03(1)(d), (g), (h), (o), and (s) by creating ''prohibitory rules'' that include specific recordkeeping requirements for each exemption in s. NR 407.03(4). See EPA's January 25, 1995 memorandum from John Seitz and Robert Van Heuvelen entitled: ''Options for Limiting the Potential to Emit of a Stationary Source under Section 112 and Title V of the Clean Air Act'', and EPA's August 27, 1996 guidance from John Seitz and Robert Van Heuvelen entitled: ''Extension of January 25, 1995 Potential to Emit Transition Policy''. The state corrected s. NR 407.03(1)(sm), Wis. Adm. Code, by specifically excluding major sources, sources subject to sections 111 or 112 of the Act, and sources subject to certain state toxics requirements from being eligible for the exemption. The WDNR also corrected s. NR 407.03(1)(t) by specifically excluding major sources from being eligible for the exemption. Wisconsin's revised Attorney General's opinion, Section II, confirms the state's authority to require operation permits for all part 70 sources.

B. Other Title V Program Revisions

The WDNR has made changes to its title V program in addition to the interim approval corrections. The EPA will address the additional program revisions in a separate rulemaking action.

What Is Involved in This Proposed Action?

A. Proposed Action

The EPA proposes full approval of the Wisconsin operation permits program based on the corrective program revisions the state submitted on March 28, 2001, September 5, 2001, and September 17, 2001. This proposed full approval of Wisconsin's corrective operation permit program submittal addresses only the requirements of title V and part 70, and does not apply to any other federal program requirements, such as State Implementation Plans pursuant to section 110 of the Act. The EPA finds that Wisconsin has satisfactorily addressed the program deficiencies identified in EPA's March 6, 1995 interim approval rulemaking.

B. Citizen Comment Letter on Wisconsin Title V Program

On May 22, 2000, EPA promulgated a rulemaking that extended the interim approval period of 86 operation permits programs until December 1, 2001 (65 FR 32035). The action was subsequently challenged by the Sierra Club and the New York Public Interest Research Group. In settling the litigation, EPA agreed to publish a notice in the **Federal Register**, so that the public would have the opportunity to identify and bring to EPA's attention alleged programmatic and/or implementation deficiencies in title V programs. In turn, EPA would respond to the public's allegations within specified time periods, if the comments were made within 90 days of publication of the **Federal Register** document.

The EPA received one timely comment letter pertaining to the Wisconsin title V program. The EPA takes no action on those comments in today's action. As stated in the **Federal Register** document published on December 11, 2000, (65 FR 77376) EPA will respond by December 1, 2001 to timely public comments on programs that have obtained interim approval; and EPA will respond by April 1, 2002 to timely comments on fully approved programs. The EPA will publish a notice of deficiency (NOD) if the Agency determines that a deficiency exists, or will notify the commenter in writing to explain the reasons for not making a finding of deficiency. An NOD will not necessarily be limited to deficiencies identified by citizens and may include any deficiencies that we have identified through our program oversight.

Administrative Requirements

Under Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities, because it merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law.

[2] Note that the interim approval action on Wisconsin's program required limits on potential to emit to be federally enforceable. However, several court cases have vacated the federally enforceable requirement in certain Act programs, including title V. See EPA's August 27, 1996 guidance from John Seitz and Robert Van Heuvelen entitled: ''Extension of January 25, 1995 Potential to Emit Transition Policy''.

This rule does not contain any unfunded mandates and does not significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4), because it proposes to approve pre-existing requirements under State law and does not impose any additional enforceable duties beyond that required by State law. This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000). This rule also does not have federalism implications, because it will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, ''Federalism'' (64 FR 43255, August 10, 1999). The rule merely proposes to approve 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 Act. This proposed 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) or Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001), because it is not a significantly regulatory action under Executive Order 12866. This action will not impose any collection of information subject to the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, other than those previously approved and assigned OMB control number 2060–0243. For additional information concerning these requirements, see 40 CFR part 70. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTA), 15 U.S.C. 272 note, requires Federal agencies to use technical standards that are developed or adopted by voluntary consensus to carry out policy objectives, so long as such standards are not inconsistent with applicable law or otherwise impracticable. In reviewing state operating permit programs pursuant to title V of the Act, EPA's role is to approve state choices, provided that they meet the criteria of the Act. Absent a prior existing requirement for the state to use voluntary consensus standards, EPA has no authority to disapprove an operating permit program submission for failure to use such standards, and it would thus be inconsistent with applicable law for EPA to use voluntary consensus standards in place of an operating permit program submission that otherwise satisfies the provisions of the Act. Therefore, the requirements of section 12(d) of the NTTA do not apply.

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order, and has determined that the rule's requirements do not constitute a taking.

List of Subjects in 40 CFR Part 70

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

Authority: 42 U.S.C. 7401–7671q.

Dated: October 18, 2001.

Thomas V. Skinner,

Regional Administrator, Region V.

[FR Doc. 01–27257 Filed 10–29–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[MI; FRL–7094–6]

Clean Air Act Proposed Full Approval Of Operating Permits Program; Michigan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to fully approve the Michigan Title V Federal Operating Permits Program, submitted by Michigan pursuant to subchapter V of the Clean Air Act, which requires states to develop, and to submit to EPA for approval, programs for issuing operating permits to all major stationary sources and to certain other sources.

DATES: EPA must receive comments on this proposed action on or before November 21, 2001.

ADDRESSES: Comments should be addressed to: Robert Miller, Chief, Permits and Grants Section, at the address noted below. Copies of the state's submittal and other supporting information used in developing the proposed approval are available for inspection during normal business hours at the following location: EPA Region 5, 77 West Jackson Boulevard, AR–18J, Chicago, Illinois 60604. Please contact Beth Valenziano at (312) 886–2703 to arrange a time to inspect the submittal.

FOR FURTHER INFORMATION CONTACT: Beth Valenziano, AR–18J, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone Number: (312) 886–2703, e-mail Addresses: *valenziano.beth@epa.gov.*

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

What is being addressed in this document?
What are the program changes that EPA proposes to approve?
What is involved in this proposed action?

What Is Being Addressed in This Document?

As required under Subchapter V of the Clean Air Act (the Act), EPA has promulgated regulations that define the minimum elements of an approvable state operating permits program and the corresponding standards and procedures by which the EPA will approve, oversee, or withdraw approval of the state programs (see 57 FR 32250 (July 21, 1992)). These regulations are codified at 40 Code of Federal Regulations (CFR) part 70. Pursuant to Subchapter V of the Act, generally known as Title V, and the implementing regulations, states developed, and submitted to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources. Where a program substantially, but not fully, met the requirements of part 70, EPA granted the program interim approval. If EPA has not fully approved a state operating permit program by the expiration of its interim approval period, EPA must establish and

implement in that State a Federal program under 40 CFR part 71.

EPA promulgated final interim approval of the Michigan Title V program on January 10, 1997 (62 FR 1387), and the program became effective on February 10, 1997. On June 18, 1997 (62 FR 34010), EPA granted Michigan source category limited interim approval, approving Michigan's 4 year initial permit issuance schedule. Source category limited interim approval allows EPA to approve an initial state permit issuance schedule up to 2 years past the 3 year phase in period required by 40 CFR 70.4(b)(11)(ii).

Michigan submitted revisions to its Title V program for EPA approval on June 1, 2001, and submitted a supplemental package on September 20, 2001. The submittals included corrections to the interim approval issues identified in the January 10, 1997 interim approval action and additional program revisions and updates.

What Are the Program Changes That EPA Proposes To Approve?

A. Title V Interim Approval Corrections

In the January 10, 1997 action, EPA identified eight interim approval issues. The following is a description of the issues and their subsequent resolution.

1. Schedule of Compliance

40 CFR 70.5(c)(8)(iii)(C) requires that a schedule of compliance for a source that is not in compliance with all applicable requirements at the time of permit issuance ''resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject.'' Michigan's original rules did not include these provisions. MDEQ corrected this deficiency by adding the above quoted requirements to the definition of ''schedule of compliance'' in Rule (R) 336.1119(a).

2. Stationary Source

The 40 CFR 70.2 definition of ''major source'' requires a stationary source or any group of stationary sources to include all pollutant emitting activities located on one or more contiguous or adjacent properties (in addition to other requirements). Although MDEQ's definition addressed adjacency, it did not include the provision addressing contiguousness. MDEQ corrected this deficiency by adding the contiguous requirement to the definition of ''stationary source'' in R 336.1119(q).

3. Solid Waste Incineration Units

40 CFR 70.3 requires non-major solid waste incineration units required to obtain a permit pursuant to section 129(e) of the Act to obtain a Title V permit. These units are not eligible for a permit deferral under 40 CFR 70.3(b). Michigan's applicability rules did not include non-major solid waste incineration units required to obtain permit pursuant to section 129(e). MDEQ corrected this deficiency by revising the state's Title V applicability rule (336.1211(1)(c)) to specifically include all solid waste incineration units required to obtain a permit under section 129(e). In addition, MDEQ revised R 336.1211(2) to specifically require that all emissions be counted in determining a stationary source's potential to emit.

4. Major Source Determinations

R 336.1212(1) allowed emissions from certain insignificant activities to be exempted from determining sources' major source status. 40 CFR part 70 does not provide for any such exemptions. MDEQ corrected this deficiency by revising R 336.1212 to eliminate the portions of the rule that created the exemptions from determining major source status. In addition, MDEQ revised R 336.1211(2) to specifically require that all emissions are counted in determining a stationary source's potential to emit.

5. Compliance Certification

40 CFR 70.5(c)(9)(i), (ii), and (iv) require permit applications to include a certification of compliance with all applicable requirements and a statement of the methods used for determining compliance. Michigan's statutes and rules did not specifically include these provisions. MDEQ corrected this deficiency by revising R 336.1210(2) to explicitly include the requirements in 40 CFR 70.5(c)(9)(i), (ii), and (iv).

6. Penalties and Fines

Section 324.5534 of Michigan's Natural Resources and Environmental Protection Act (NREPA) provided exemptions from penalties or fines for violations caused by an act of God, war, strike, riot, catastrophe, or other conditions where negligence or willful misconduct was not the proximate cause. Title V does not provide for such broad penalty and fine exemptions. Michigan corrected this deficiency by repealing Section 324.5534 from the state statute.

7. Startup, Shutdown, Malfunction (SSM) Rules

Michigan's SSM rules [R 336.1913 and R 336.1914) provided an affirmative defense that was broader than that provided by 40 CFR 70.6(g), and that was also inconsistent with Section 110 of the Act, as interpreted in EPA's enforcement discretion policy. The state SSM rules therefore affected the state's enforcement and compliance assurance authorities required by 40 CFR 70.4(b)(3)(i), 70.4(b)(3)(vii), and 70.11. MDEQ corrected these deficiencies by rescinding R 336.1913 and R 336.1914.

8. Audit Privilege and Immunity Law

Michigan's audit privilege and immunity law, part 148 of NREPA, impermissibly affected numerous requirements of the state's Title V operating permit program, including: assuring compliance [70.4(b)(3)(i)]; enforcing permits and the requirement to obtain a permit [70.4(b)(3)(vii)]; and the general enforcement authorities [70.11(a) and (c)]. The EPA's final interim approval of Michigan's part 70 operating permit program outlined the changes and demonstrations required for full approval. Michigan corrected these deficiencies by amending part 148 of NREPA in accordance with EPA's recommendations, and by providing state Attorney General interpretations and an additional commitment regarding confidentiality agreements.[1]

B. Other Title V Program Revisions

The MDEQ has made changes to its Title V program in addition to the interim approval corrections. The EPA will address the additional program revisions in a separate rulemaking action.

What Is Involved in This Proposed Action?

A. Proposed Action

The EPA proposes full approval of the Michigan operating permits program based on the corrective program revisions the state submitted on June 1, 2001 and September 20, 2001. This proposed full approval of Michigan's corrective operating permit program submittal addresses only the requirements of Title V and part 70, and does not apply to any other federal program requirements, such as State Implementation Plans pursuant to section 110 of the Act. The EPA finds

[1] See the following correspondence for further information: a letter dated June 11, 1997 from Frank J. Kelley, Michigan Attorney General, to Russell J. Harding, MDEQ, regarding audit law interpretations; a memorandum dated June 20, 1997 from A. Michael Leffler, Michigan Department of Attorney General, to Russell J. Harding regarding audit law interpretations; a letter dated July 1, 1997 from Russell J. Harding to Steven A. Herman, USEPA, outlining agreed upon statutory revisions; a letter dated November 21, 1997 from Russell J. Harding, MDEQ, to Steven A. Herman, USEPA, submitting the revised audit privilege law; a letter dated December 12, 1997 from Steven A. Herman to Russell J. Harding stating that Michigan's title V audit law issues are resolved.

that Michigan has satisfactorily addressed the program deficiencies identified in EPA's January 10, 1997 interim approval rulemaking.

B. Citizen Comment Letters on Michigan Title V Program

On May 22, 2000, EPA promulgated a rulemaking that extended the interim approval period of 86 operating permits programs until December 1, 2001 (65 FR 32035). The Sierra Club and the New York Public Interest Research Group challenged this action. In settling the litigation, EPA agreed to publish a notice in the **Federal Register**, so that the public would have the opportunity to identify and bring to EPA's attention alleged programmatic and/or implementation deficiencies in Title V programs. In turn, EPA would respond to the public's allegations within specified time periods, if the comments were made within 90 days of publication of the **Federal Register** document.

The EPA received two timely comment letters pertaining to the Michigan Title V program. The EPA takes no action on those comments in today's action. As stated in the **Federal Register** document published on December 11, 2000 (65 FR 77376), EPA will respond by December 1, 2001 to timely public comments on programs that have obtained interim approval; and EPA will respond by April 1, 2002 to timely comments on fully approved programs. The EPA will publish a notice of deficiency (NOD) if the Agency determines that a deficiency exists, or will notify the commenter in writing to explain the reasons for not making a finding of deficiency. An NOD will not necessarily be limited to deficiencies identified by citizens and may include any deficiencies that we have identified through our program oversight.

Administrative Requirements

Under Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities, because it merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. This rule does not contain any unfunded mandates and does not significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4), because it proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duties beyond that required by state law. This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000). This rule also does not have federalism implications, because it will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, ''Federalism'' (64 FR 43255, August 10, 1999). The rule merely proposes to approve 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 Act. This proposed 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) or Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001), because it is not a significantly regulatory action under Executive Order 12866. This action will not impose any collection of information subject to the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, other than those previously approved and assigned OMB control number 2060–0243. For additional information concerning these requirements, see 40 CFR part 70. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTA), 15 U.S.C. 272 note, requires federal agencies to use technical standards that are developed or adopted by voluntary consensus to carry out policy objectives, so long as such standards are not inconsistent with applicable law or otherwise impracticable. In reviewing state operating permit programs pursuant to Title V of the Act, EPA's role is to approve state choices, provided that they meet the criteria of the Act. Absent a prior existing requirement for the state to use voluntary consensus standards, EPA has no authority to disapprove an operating permit program submission for failure to such standards, and it would thus be inconsistent with applicable law for EPA to use voluntary consensus standards in place of an operating permit program submission that otherwise satisfies the provisions of the Act. Therefore, the requirements of section 12(d) of the NTTA do not apply.

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order, and has determined that the rule's requirements do not constitute a taking.

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 19, 2001.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 01–27259 Filed 10–29–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[MN; FRL–7094–5]

Clean Air Act Proposed Full Approval of the Air Operation Permits Program; MN

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to fully approve the Minnesota Title V Federal Operating Permits Program, submitted

by Minnesota on June 9, 2000, July 21, 2000, and June 12, 2001 pursuant to subchapter V of the Clean Air Act, which requires States to develop, and submit to EPA for approval, programs for issuing operation permits to all major stationary sources, and to certain other sources.

DATES: EPA must receive written comments on this proposed action on or before November 21, 2001.

ADDRESSES: Comments should be addressed to: Robert Miller, Chief, Permits and Grants Section, EPA (AR–18J), 77 West Jackson Boulevard, Chicago, Illinois, 60604. Copies of the State's submittal and other supporting information used in developing the proposed approval are available for inspection during normal business hours at the following location: EPA Region 5, 77 West Jackson Boulevard, AR–18J, Chicago, Illinois, 60604. Please contact Robert Miller at (312) 353–0396 to arrange a time to inspect the submittal.

FOR FURTHER INFORMATION CONTACT: Rachel Rineheart, Telephone Number: (312) 886–7017, e-mail address: rineheart.rachel@epa.gov; or Robert Miller, EPA (AR–18J), 77 West Jackson Boulevard, Chicago, Illinois, 60604, Telephone Number (312) 353–0396, e-mail address: *miller.robert@epa.gov.*

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

What Is Being Addressed In This Document?
What Are The Program Changes That EPA Proposes To Approve?
What Is Involved In This Proposed Action?

What Is Being Addressed in This Document?

As required under Title V of the Clean Air Act (''the Act''), EPA promulgated regulations which define the minimum elements of an approvable State operating permits program and the corresponding standards and procedures by which the EPA will approve, oversee, or withdraw approval of the State programs (see 57 FR 32250 (July 21, 1992)). These regulations are codified at 40 Code of Federal Regulations (CFR) part 70. Pursuant to Title V of the Act and the implementing regulations, states develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources. Where a program substantially, but not fully, meets the requirements of part 70, EPA grants the program interim approval. If EPA has not fully approved a program by the expiration of the interim approval period, EPA must establish and implement a Federal program under 40 CFR part 71 in that state.

EPA promulgated final interim approval of the Minnesota Title V program on June 16, 1995 (60 FR 31637), and the program became effective on July 16, 1995. In the final interim approval, EPA identified certain program deficiencies that Minnesota would be required to address in order for EPA to fully approve the Minnesota Title V program. The interim approval for Minnesota's program expires on December 1, 2001.

Minnesota submitted to EPA revisions to its Title V program on June 9, 2000, July 21, 2000, and June 12, 2001. These submittals included corrections to the interim approval issues identified in the June 16, 1995 interim approval, and additional program revisions and updates.

What Are The Program Changes That EPA Proposes To Approve?

A. Title V Interim Approval Corrections

In the June 16, 1995 interim approval, EPA identified five deficiencies to be corrected for the program to receive full approval. The following is a description of the issues and their subsequent resolution.

1. Monitoring Reports

In the June 16, 1995 action, EPA found that pursuant to part 70 Minnesota must require, at a minimum, semi-annual monitoring reports from all sources required to monitor at least every 6 months and annual monitoring reports from sources required to monitor less frequently than every 6 months. Minnesota has added language requiring all sources subject to part 70 permitting requirements to submit a deviation report every 6 months, using the State's deviation reporting form. EPA has reviewed this form and compared the content to the requirements for semi-annual monitoring reports in 40 CFR part 70.

Minnesota Rule 7007.0800 requires that the deviation report be certified by a responsible official. For each monitoring parameter, the form requires: a brief summary of the monitoring performed; a statement describing compliance; and a summary of any deviation that occurred which includes the number of deviations, the date and time of each deviation, the actual recorded value, a statement of why the deviation occurred, and a description of corrective actions taken. EPA believes that the rule and the required reporting forms meet the semi-annual monitoring report requirement of part 70.

2. Administrative Permit Amendment Procedures

The program originally submitted to EPA for approval allowed the use of administrative amendment procedures to ''clarify'' a permit term. EPA felt that the term ''clarify'' was ambiguous and that the State's rule could be interpreted to include changes outside the scope of the administrative amendment procedures outlined in part 70. The following change to Minnesota Rule 7007.1400 was effective on January 19, 1998 (added text has been underlined), ''An amendment to clarify *the meaning of* a permit term.'' By adding the phrase ''the meaning of,'' MPCA has limited the scope of changes that could qualify for the administrative amendment process. It prevents changes in the limitation itself and better reflects the types of permit revisions that the State had envisioned for this process. As an example, a permit might contain a requirement for daily monitoring of temperature for a unit stating that the temperature must be between 100 and 150 degrees Fahrenheit. The State could add language through the administrative amendment process clarifying that ''daily'' means ''any day the unit is in operation.'' In contrast, if an error had been made in the permit such as the wrong temperature range or the limit should have been degrees Celsius rather than Fahrenheit, the administrative amendment process could not be used because the correction of that error would result in a change in the meaning of the limitation.

3. Incorporation by Reference

In the June 16, 1995 interim approval, EPA stated that as a condition for full approval Minnesota Rule 7007.0800, subpart 16, must be revised to require that all conditions required by 40 CFR 70.6(a) contained in Minnesota Rule 7007.0800, subpart 16, be expressly stated in part 70 permits. The conditions contained in this subpart are general conditions applicable to all part 70 sources such as the severability clause. Since that time, EPA has clarified its position on permit content requirements. The March 5, 1996 document ''White Paper Number 2 for Improved Implementation of the part 70 Operating Permits Program,'' addresses the issue of incorporation by reference on pages 36–41. Because the requirements contained in Minnesota Rule 7007.0800, subpart 16, are not source specific and are clearly identifiable in the state rules, EPA finds that incorporation by reference of these terms is consistent with EPA's

interpretation of the permit content requirements of part 70.

4. Fees

In reviewing Minnesota's initial program submittal, EPA found that Minnesota had not demonstrated it was collecting adequate fees and required Minnesota to submit a detailed fee demonstration or to increase the types of pollutant for which fees are charged in order to collect an amount equivalent to the presumptive minimum. This problem arose because Minnesota had not included all the pollutants in the definition of ''any regulated pollutant for presumptive fee calculation.'' In an October 16, 1995, memorandum, ''Definition of Regulated Pollutant for Particulate Matter for Purposes of Title V,'' EPA stated that only PM10 is considered a regulated pollutant under Title V; therefore, Minnesota no longer needs to include particulate matter greater than 10 microns in diameter in fee calculations. A November 10, 1994, letter from MPCA addresses the remaining pollutants. The November 10, 1994, letter provides a summary of total reduced sulfur, hydrogen chloride, and sulfuric acid mist emissions from the Minnesota Emission Inventory. The State shows that fees for these pollutants would increase fees collected in the State by less than 0.18 percent. The State takes the position that the costs associated with monitoring, reporting, and tracking these emissions outweigh the benefit of any additional revenue that would be collected. EPA believes that the additional revenue from including these pollutants in the fee calculation would have no more than a trivial benefit. Therefore, EPA has decided to accept Minnesota's rule as meeting the presumptive minimum.

5. Timelines for Permit Issuance

The initial program submittal required Minnesota to take final action on minor modifications to permits within 180 days from the receipt of the application. Part 70 requires final action within 90 days of receiving a complete application for this type of permit modification. Minnesota has revised Minnesota Rule Chapter 7007 to address this issue. Minn. R. 7007.0750 Subpart 2.C now requires MPCA to take final action on a minor permit amendment within 90 days of receiving a complete application. This is now consistent with the requirements of 40 CFR 70.5(e)(2)(iv). The rule change was adopted on June 1, 1999.

B. Other Title V Program Revisions

The MPCA has made changes to its Title V program in addition to the interim approval corrections. The EPA will address the additional program revisions in a separate rulemaking action.

What Is Involved in This Proposed Action?

A. Proposed Action

The EPA proposes full approval of the Minnesota operating permits program based on the corrective program revisions the State submitted on June 9, 2000, July 21, 2000, and June 12, 2001. This proposed full approval of Minnesota's corrective operating permit program submittal is solely for the purpose of meeting the requirements of Title V and part 70, and makes no judgement concerning any other Federal program requirements, such as State Implementation Plans pursuant to section 110 of the Clean Air Act. The EPA finds that Minnesota has satisfactorily addressed the program deficiencies that EPA identified in the June 16, 1995 interim approval.

B. Citizen Comment Letter on Minnesota Title V Program

On May 22, 2000, EPA promulgated a rulemaking that extended the interim approval period of 86 operating permits programs until December 1, 2001 (65 FR 32035). The action was subsequently challenged by the Sierra Club and the New York Public Interest Research Group (NYPIRG). In settling the litigation, EPA agreed to publish a notice in the **Federal Register** that would alert the public that they may identify and bring to EPA's attention alleged programmatic and/or implementation deficiencies in Title V programs and that EPA would respond to their allegations within specified time periods if the comments were made within 90 days of publication of the **Federal Register** notice.

The EPA received one comment letter pertaining to the Minnesota Title V program. The EPA takes no action on those comments in today's action. As stated in the **Federal Register** document published on December 11, 2000, (65 FR 77376) EPA will respond by December 1, 2001 to timely public comments on programs that have obtained interim approval; and EPA will respond by April 1, 2002 to timely comments on fully approved programs. The EPA will publish a notice of deficiency (NOD) if the Agency determines that a deficiency exists, or will notify the commenter in writing to explain the reasons for not making a finding of deficiency. An NOD will not necessarily be limited to deficiencies identified by citizens and may include any deficiencies that we have identified through our program oversight.

Administrative Requirements

Under Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities, because it merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. This rule does not contain any unfunded mandates and does not significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4), because it proposes to approve pre-existing requirements under State law and does not impose any additional enforceable duties beyond that required by State law. This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000). This rule also does not have federalism implications, because it will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, ''Federalism'' (64 FR 43255, August 10, 1999). The rule merely proposes to approve 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 Act. This proposed 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) or Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001), because it is not a significantly regulatory action under

Executive Order 12866. This action will not impose any collection of information subject to the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, other than those previously approved and assigned OMB control number 2060–0243. For additional information concerning these requirements, see 40 CFR part 70. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTA), 15 U.S.C. 272 note, requires federal agencies to use technical standards that are developed or adopted by voluntary consensus to carry out policy objectives, so long as such standards are not inconsistent with applicable law or otherwise impracticable. In reviewing state operating permit programs pursuant to Title V of the Act, EPA's role is to approve state choices, provided that they meet the criteria of the Act. Absent a prior existing requirement for the state to use voluntary consensus standards, EPA has no authority to disapprove an operating permit program submission for failure to such standards, and it would thus be inconsistent with applicable law for EPA to use voluntary consensus standards in place of an operating permit program submission that otherwise satisfies the provisions of the Act. Therefore, the requirements of section 12(d) of the NTTA do not apply.

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order, and has determined that the rule's requirements do not constitute a taking.

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 19, 2001.

David A. Ullrich,

Acting Regional Administrator, Region V.

[FR Doc. 01–27258 Filed 10–29–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPPTS–50644; FRL–6798–7]

RIN 2070–AB27

Proposed Modification of Significant New Uses of Certain Chemical Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Under section 5(a)(2) of the Toxic Substances Control Act (TSCA) and 40 CFR 721.185, EPA is proposing to amend three significant new use rules (SNURs) to allow certain uses without requiring a significant new use notice (SNUN). EPA is proposing these amendments based on review of new toxicity test data on one chemical and review of SNUNs for the other two chemicals. The proposed amended SNURs would continue to require a SNUN for new uses that may involve significant changes in human or environmental exposure.

DATES: Comments, identified by docket control number OPPTS–50644 must be received on or before November 29, 2001.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–50644 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Director, Office of Program Management and Evaluation, Office of Pollution Prevention and Toxics (7401), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: James Alwood, Chemical Control Division, Office of Pollution Prevention and Toxics (7405), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 260–1857; e-mail address: *alwood.jim@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture, import, process, or use the chemical substances contained in this proposed rule. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Chemical manufacturers	325	Manufacturers, importers, processors, and users of chemicals
Petroleum and coal product industries	324	Manufacturers, importers, processors, and users of chemicals

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action applies to certain entities. To determine whether you or your business is affected by this action, you should carefully examine the applicability provisions in 40 CFR 721.5. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet homepage at *http://www.epa.gov/*. You may also obtain copies of the notice of availability documents for the 835 (63 FR 4259, January 28, l998) (FRL–5761–7), 850 (61 FR 16486, April 15, l996) (FRL–5363–1), and 870 (63 FR 41845, August 5, l998) (FRL–5740–1) series OPPTS Harmonized Test Guidelines at this same site. To access this document, on the homepage select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the

entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*. The OPPTS Harmonized Test Guidelines referenced in this document are available on EPA's Internet homepage at *http://www.epa.gov/opptsfrs/home/guidelin.htm*. A frequently updated electronic version of 40 CFR part 721 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr721_00.html*, a beta site currently under development.

2. *In person*. The Agency has established an official record for this action under docket control number OPPTS–50644. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Center is (202) 260–7099.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–50644 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: OPPT Document Control Office (DCO) in East Tower Rm. G–099, Waterside Mall, 401 M St., SW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 260–7093.

3. *Electronically*. You may submit your comments electronically by e-mail to: oppt.ncic@epa.gov, or mail your computer disk to the address identified above. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPPTS–50644. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

We invite you to provide your views on the various options we propose, new approaches we haven't considered, the potential impacts of the various options (including possible unintended consequences), and any data or information that you would like the Agency to consider during the development of the final action. You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the proposed rule.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

A. What Action is the Agency Taking?

In the **Federal Register** of January 22, 1998, OPPTS–50628 (63 FR 3393) (FRL–5720–3) EPA issued a SNUR for P–95–1411. In the **Federal Register** of August 20, 1998, OPPTS–50632 (63 FR 44562) (FRL–5788–7) EPA issued SNURs for P–97–520 and P–97–21. On January 7, 2000, EPA received SNUNs for P–97–520 and P–97–521. Because of additional data EPA has received for these substances, EPA is proposing to modify the significant new use and recordkeeping requirements under 40 CFR part 721, subpart E. In this unit, EPA provides a brief description for each substance, including its premanufacture notice (PMN) number, chemical name (generic name if the specific name is claimed as CBI), CAS number (if assigned), basis for the modification of the TSCA section 5(e) consent order for the substance, and the CFR citation. Further background information for the substance is contained in Unit I.B.2 of this document.

PMN Number P–95–1411

Chemical name: Propanedioic acid, [(4-methoxyphenyl)methylene]-, bis(1,2,2,6,6-pentamethyl-4-piperdinyl) ester (9CI).

CAS number: 147783–69–5.

Federal Register *publication date and reference:* January 22, 1998 (63 FR 3393).

Docket number: OPPTS–50628.

Basis for revocation of section 5(e) consent order/SNUR modification: Based on the results of a 90-day subchronic oral toxicity study in rats and expected worker exposures, EPA no longer concludes that the PMN substance may present an unreasonable risk of injury to human health, and consequently revoked the consent order. EPA is eliminating the SNUR provisions for worker protection, hazard communication, and industrial, commercial, and consumer activities as it no longer finds these provisions necessary to prevent significant changes

in human exposure. The SNUR provisions for release to water will remain as EPA still finds that releases to water could result in significant changes in environmental exposure.
CFR citation: 40 CFR 721.4589.

PMN Numbers P–97–520/521 and S–00–397/398
Chemical name: 2-Piperdinone, 1,3-dimethyl-, (P–97–520/S–00–397); 2-Piperdinone, 1,5-dimethyl-, (P–97–521/S–00–398).
CAS number: 1690–76–2 (P–97–520/S–00–397); 86917–58–0 (P–97–521/S–00–398).
Federal Register *publication date and reference:* August 20, 1998 (63 FR 44562).
Docket number: OPPTS–50632.
Basis for section 5(e) consent order/SNUR modification: In response to the original two PMNs for these substances, EPA issued a TSCA section 5(e) consent order based on a finding that these substances would be produced in substantial quantities and there may be significant or substantial human exposure to the substances. Based on information from the two SNUNs for these same chemicals from the original PMN submitter, EPA issued a modified TSCA section 5(e) consent order to allow the new uses with certain precautionary restrictions under section 5(e)(1)(A)(i), 5(e)(1)(A)(ii)(I), and 5(e)(1)(A)(ii)(II) of TSCA, based on a finding that these substances may present an unreasonable risk of injury to human health, that the PMN substances will be produced in substantial quantities, and there may be significant or substantial environmental and human exposure to the substances. EPA is hereby proposing to modify these two SNURs to allow other manufacturers and processors to engage in those new uses provided the protective restrictions are observed.
Toxicity concerns: Based on structural activity analogy to 2-piperdinone, *N*-methylpyrrolidone, and other similarly analogous substances, there is concern for neurotoxicity, developmental toxicity, and reproductive toxicity. Additionally, based on chemical-specific toxicity data, there is concern for systemic toxicity and developmental toxicity.
Recommended testing: EPA has determined that a chronic toxicity study (40 CFR 798.3260 or OPPTS 870.4100 test guideline) and a reproduction/fertility effects study (40 CFR 798.4700 or OPPTS 870.3800 test guideline) would help to characterize the health effects of the substances. EPA has also determined that an inherent biodegradability study in soil (OPPTS 835.3300 test guideline), anerobic biodegradation of organic chemicals (OPPTS 835.3400 test guideline), fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft)), and a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft)) would help characterize the environmental effects of the PMN substance. The PMN submitter has agreed to conduct the environmental effects test before exceeding the production volume limit.
CFR citations: 40 CFR 721.6175 (P–97–520/S–00–397); 40 CFR 721.6176 (P–97–521/S–00–398).

B. What is the Agency's Authority for Taking this Action?

TSCA section 5(a)(2) and 40 CFR part 721 authorize EPA to determine that a use of a chemical substance is a ''significant new use.'' EPA must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2) of TSCA. Once EPA promulgates a rule designating ''significant new uses'' for a given chemical substance, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the substance for that use. The mechanism for reporting under this requirement is established under 40 CFR 721.5.

Section 5(a)(1) of TSCA (15 U.S.C. 2604(a)(1)) and its implementing regulations at 40 CFR parts 720 and 721 require that any person intending to manufacture a new chemical substance, or to manufacture or process any chemical substance for a significant new use, must give EPA 90-days advance written notice in the form of a PMN or SNUN, respectively.

Upon reviewing those notices, if EPA makes certain determinations regarding potential exposures and risks that may be presented by the activities associated with the chemical, EPA may regulate the chemical by issuing an order under TSCA section 5(e) and/or a SNUR under TSCA section 5(a)(2) and 40 CFR part 721. The TSCA section 5(e) order governs only the entity who submitted the PMN, whereas the section 5(a)(2) SNUR applies to all manufacturers and processors of the same chemical.

EPA may respond to SNUNs by issuing or modifying a TSCA section 5(e) consent order and/or amending the SNUR promulgated under TSCA section 5(a)(2). Amendment of the SNUR will often be necessary to allow companies other than the SNUN submitter to engage in the newly authorized use(s), because even after a manufacturer submits a SNUN and the review period expires, processors of the same substance still must submit a SNUN before engaging in the significant new use. Provisions regarding EPA's authority to modify or revoke SNUR requirements appear at 40 CFR 721.185.

EPA responded to PMN P–95–1411 by issuing a TSCA section 5(e) consent order and TSCA section 5(a)(2) SNUR to address concerns for both human health and the environment. Based on data from a 90-subchronic oral toxicity study in rats, submitted pursuant to the terms of the 5(e) consent order, EPA however, no longer concludes that the PMN substance may present an unreasonable risk to human health. Therefore, EPA has revoked the section 5(e) consent order entirely and, pursuant to TSCA section 5(a)(2) and 40 CFR 721.185, is proposing to amend the SNUR to remove the human health related notice requirements, leaving only the notification requirements related to environmental releases.

EPA responded to PMNs P–97–520/521 by issuing a TSCA section 5(e) consent order requiring certain testing based on expected substantial human and environmental exposures and promulgating a TSCA section 5(a)(2) SNUR to address concerns for human health. In response to SNUNs S–00–397/398 by the same manufacturer proposing new uses for the same chemicals, EPA modified the section 5(e) consent order to allow certain new uses, but with restrictions to mitigate potential risks to human health. Accordingly, pursuant to TSCA section 5(a)(2) and 40 CFR 721.185, EPA is hereby proposing to amend the corresponding SNURs to modify the significant new uses consistent with the terms of the modified section 5(e) consent order and to provide EPA an opportunity to assess the potential for significant changes in human or environmental exposure.

C. Applicability of General Provisions

General provisions for SNURs appear under subpart A of 40 CFR part 721. These provisions describe persons subject to the proposed rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the proposed rule to uses occurring before the effective date of the final rule. Provisions relating to user fees appear at 40 CFR part 700. Persons subject to this SNUR must comply with the same notice requirements and EPA regulatory procedures as submitters of PMNs under section 5(a)(1)(A) of TSCA. In particular, these requirements include the information submission requirements of

TSCA section 5(b) and 5(d)(1), the exemptions authorized by TSCA section 5 (h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720. Once EPA receives a SNUR notice, EPA may take regulatory action under TSCA section 5(e), 5(f), 6, or 7 to control the activities on which it has received the SNUR notice. If EPA does not take action, EPA is required under TSCA section 5(g) to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret TSCA section 12(b) appear at 40 CFR part 707. Persons who intend to import a chemical substance identified in a final SNUR are subject to the TSCA section 13 import certification requirements, which are codified at 19 CFR 12.118 through 12.127 and 127.28. Such persons must certify that they are in compliance with SNUR requirements. The EPA policy in support of the import certification appears at 40 CFR part 707.

III. Regulatory Assessment Requirements

Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), the Office of Management and Budget (OMB) has determined that proposed or final SNURs are not a ''significant regulatory action'' subject to review by OMB, because they do not meet the criteria in section 3(f) of the Executive Order.

Based on EPA's experience with proposing and finalizing SNURs, State, local, and tribal governments have not been impacted by these rulemakings, and EPA does not have any reasons to believe that any State, local, or tribal government will be impacted by this rulemaking. As such, EPA has determined that this regulatory action does not impose any enforceable duty, contain any unfunded mandate, or otherwise have any affect on small governments subject to the requirements of sections 202, 203, 204, or 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4).

This proposed rule does not have tribal implications because it is not expected to have substantial direct effects on Indian Tribes. This does not significantly or uniquely affect the communities of Indian tribal governments, nor does it involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 276755, May 19, 1998), do not apply to this proposed rule. Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000), which took effect on January 6, 2001, revokes Executive Order 13084 as of that date. EPA developed this rulemaking, however, during the period when Executive Order 13084 was in effect; thus, EPA addressed tribal considerations under Executive Order 13084. For the same reasons stated for Executive Order 13084, the requirements of Executive Order 10175 do not apply to this proposed rule either. Nor will this action have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999).

In issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988, entitled *Civil Justice Reform* (61 FR 4729, February 7, 1996).

EPA has complied with Executive Order 12630, entitled *Governmental Actions and Interference with Constitutionally Protected Property Rights* (53 FR 8859, March 15, 1988), by examining the takings implications of this proposed rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the Executive Order.

This action does not entail special considerations of environmental justice related issues as delineated by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

This action is not subject to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866, and this action does not address environmental health or safety risks disproportionately affecting children.

In addition, since this action does not involve any technical standards, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) Pub. L. 104–113 section 12(d) (15 U.S.C. 272 note), does not apply to this action.

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that promulgation of this SNUR will not have a significant adverse economic impact on a substantial number of small entities. The rationale supporting this conclusion is as follows. A SNUR applies to any person (including small or large entities) who intends to engage in any activity described in the proposed rule as a ''significant new use.'' By definition of the word ''new,'' and based on all information currently available to EPA, it appears that no small or large entities presently engage in such activity. Since a SNUR only requires that any person who intends to engage in such activity in the future must first notify EPA by submitting a SNUN, no economic impact will even occur until someone decides to engage in those activities. Although some small entities may decide to conduct such activities in the future, EPA cannot presently determine how many, if any, there may be. However, EPA's experience to date is that, in response to the promulgation of over 530 SNURs, the Agency has received fewer than 15 SNUNs. Of those SNUNs submitted, none appear to be from small entities in response to any SNUR. In addition, the estimated reporting cost for submission of a SNUN is minimal regardless of the size of the firm. Therefore, EPA believes that the potential economic impact of complying with this SNUR are not expected to be significant or adversely impact a substantial number of small entities. In a SNUR that published on June 2, 1997 (62 FR 29684) (FRL–5597–1), the Agency presented it's general determination that proposed and final SNURs are not expected to have a significant economic impact on a substantial number of small entities, which was provided to the Chief Counsel for Advocacy of the Small Business Administration.

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, an Agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial display in the preamble of the final rule and in addition to its display on any related collection instrument, are listed in 40 CFR part 9.

The information collection requirements related to this action have already been approved by OMB pursuant to the PRA under OMB control number 2070–0012 (EPA ICR No. 574). This action does not impose any burden requiring additional OMB approval. If an entity were to submit a SNUN to the Agency, the annual burden is estimated to average between 30 and 170 hours per response. This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review, and submit the required significant new use notice.

Send any comments about the accuracy of the burden estimate, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the Director, OP Regulatory Information Division (2137), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please remember to include the OMB control number in any correspondence, but do not submit any completed forms to this address.

This proposed 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 significant regulatory action under Executive Order 12866.

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: October 22, 2001.

William H. Sanders, III

Office Director, Office of Pollution Prevention and Toxics.

Therefore it is proposed that 40 CFR part 721 be amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 would continue to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

2. Section 721.4589 is amended as follows:

a. By revising the section heading.

b. By revising paragraphs (a)(1), (a)(2)(i), and (b)(1).

c. By removing and reserving paragraph (a)(2)(ii).

d. By removing paragraphs (a)(2)(iii), (a)(2)(iv), and (b)(3).

§ 721.4589 Propanedioic acid, [(4-methoxyphenyl)methylene]-, bis(1,2,2,6,6-pentamethyl-4-piperdinyl) ester (9CI).

(a) * * * (1) The chemical substance identified as propanedioic acid, [(4-methoxyphenyl)methylene]-, bis(1,2,2,6,6-pentamethyl-4-piperdinyl) ester (9CI) (PMN P–95–1411; CAS No. 147783–69–5) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) * * *

(i) *Release to water*. Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) * * *

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

* * * * *

3. Section 721.6175 is amended as follows:

a. By revising the section heading.

b. By revising paragraphs (a)(1), (a)(2)(i), and (b)(1).

c. By adding paragraphs (a)(2)(ii), (a)(2)(iii), and (b)(3).

§ 721.6175 2-Piperdinone, 1,3-dimethyl-,.

(a) * * * (1) The chemical substance identified as 2-Piperdinone, 1,3-dimethyl-, (PMN P–97–520 and SNUN 00–397; CAS No. 1690–76–2) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) * * *

(i) *Protection in the workplace*. Requirements as specified in § 721.63 (a)(1), (a)(2)(i), (a)(3), (b) (concentration set at 1.0 percent), and (c).

(ii) *Hazard communication program*. Requirements as specified in § 721.72 (a), (b), (c), (d), (e) (concentration set at 1.0 percent), (f), (g)(1)(i), (g)(1)(iii), (g)(1)(iv), (g)(1)(ix), (g)(2)(i), (g)(2)(v), and (g)(5).

(iii) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80 (k) (use or processing other than: in enclosed systems (such as hydrocarbon extraction, polymer synthesis, wire enamel resin); electronic industry cleaning solvent; and other precision industry cleaning (such as automobile manufacturing, aerospace, and optics)), (o), and (q).

(b) * * *

(1) *Recordkeeping*. The recordkeeping requirements specified in § 721.125 (a), (b), (c), (d), (e), (f), (g), (h), and (i) are applicable to manufacturers, importers, and processors of this substance.

* * * * *

(3) *Determining whether a specific use is subject to this section*. The provisions of § 721.1725(b)(1) apply to this substance.

4. Section 721.6176 is amended as follows:

a. By revising the section heading.

b. By revising paragraphs (a)(1), (a)(2)(i), and (b)(1).

c. By adding paragraphs (a)(2)(ii), (a)(2)(iii), and (b)(3).

§ 721.6176 2-Piperdinone, 1,5-dimethyl-,.

(a) * * * (1) The chemical substance identified as 2-Piperdinone, 1,5-dimethyl-, (PMN P–97–521 and SNUN 00–398; CAS No. 86917–58–0) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) * * *

(i) *Protection in the workplace*. Requirements as specified in § 721.63 (a)(1), (a)(2)(i), (a)(3), (b) (concentration set at 1.0 percent), and (c).

(ii) *Hazard communication program*. Requirements as specified in § 721.72 (a), (b), (c), (d), (e) (concentration set at 1.0 percent), (f), (g)(1)(i), (g)(1)(iii), (g)(1)(iv), (g)(1)(ix), (g)(2)(i), (g)(2)(v), and (g)(5).

(iii) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80 (k), (use or processing other than: in enclosed systems (such as hydrocarbon extraction, polymer synthesis, wire enamel resin); electronic industry cleaning solvent; and other precision industry cleaning (such as automobile manufacturing, aerospace, and optics)), (o), and (q).

(b) * * *

(1) *Recordkeeping*. The recordkeeping requirements specified in § 721.125 (a), (b), (c), (d), (e), (f), (g), (h), and (i) are applicable to manufacturers, importers, and processors of this substance.

* * * * *

(3) *Determining whether a specific use is subject to this section*. The provisions of § 721.1725(b)(1) apply to this substance.

[FR Doc. 01–27291 Filed 10–29–01; 8:45 am]

BILLING CODE 6560–50–S

Notices

Federal Register

Vol. 66, No. 210

Tuesday, October 30, 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

Agricultural Research Service

Notice of Intent to Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Forest Service, intends to grant to Weckworth Manufacturing, Inc. of Wichita, Kansas, an exclusive license to U.S. Patent No. 5,921,388, ''Quick Deployment Fire Shelter,'' issued on July 13, 1999. Notice of Availability of this invention for licensing was published in the **Federal Register** on August 23, 1999.

DATES: Comments must be received by November 29, 2001.

ADDRESSES: Send comments to: Janet I. Stockhausen, USDA Forest Service, One Gifford Pinchot Drive, Madison, Wisconsin 53705–2398.

FOR FURTHER INFORMATION CONTACT: Janet I. Stockhausen of the USDA Forest Service at the Madison address given above; telephone: 608–231–9502; fax: 608–231–9508; or e-mail: *jstockhausen@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Weckworth Manufacturing, Inc. has submitted a complete and sufficient application for a license. The prospective license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within thirty (30) days from the date of this published Notice, the Forest Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Michael D. Ruff,

Assistant Administrator.

[FR Doc. 01–27100 Filed 10–29–01; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Forest Service

Newspapers Used for Publication of Legal Notice of Appealable Decisions for the Intermountain Region; Utah, Idaho, Nevada, and Wyoming

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: This notice lists the newspaper that will be used by all ranger district, forests, and the Regional Office of the Intermountain Region to publish legal notice of all decisions subject to appeal under 36 CFR Part 215 and 36 CFR Part 217. The intended effect of this action is to inform interested members of the public which newspaper will be used to publish legal notices of decisions, thereby allowing them to receive constructive notice of a decision, to provide clear evidence of timely notice, and to achieve consistency in administering the appeals process.

DATES: Publication of legal notices in the listed newspaper will begin with decisions subject to appeal that are made on or after December 1, 2000. The list of newspaper will remain in effect until June 1, 2001, when another notice will be published in the **Federal Register**

FOR FURTHER INFORMATION CONTACT: Barbara Schuster, Regional Appeals Manager, Intermountain Region, 324 25th Street, Ogden, UT 84401, and Phone (801) 625–5301.

SUPPLEMENTARY INFORMATION: The administrative appeal procedures 36 CFR part 215 and 36 CFR part 217, of the Forest Service require publication of legal notice in a newspaper of general circulation of all decisions subject to appeal. This newspaper publication of notices of decisions is in addition to direct notice to those who have requested notice in writing and to those known to be interested and affected by a specific decision.

The legal notice is to identify: the decision by title and subject matter; the date of the decision; the name and title of the official making the decision; and how to obtain copies of the decision. In addition, the notice is to state the date the appeal period begins which is the day following publication of the notice.

The timeframe for appeal shall be based on the date of publication of the notice in the first (principal) newspaper listed for each unit.

The newspaper to be used are as follows:

Regional Forester, Intermountain Region

For decisions made by the Regional Forester affecting National Forests in Idaho:

The Idaho Statesman, Boise, Idaho.

For decisions made by the Regional Forester affecting National Forests in Nevada:

The Reno Gazette-Journal, Reno, Nevada.

For decisions made by the Regional Forester affecting National Forests in Wyoming:

Casper Star-Tribune, Casper, Wyoming.

For decisions made by the Regional Forester affecting National Forests in Utah:

Salt Lake Tribune, Salt Lake City, Utah.

If the decision made by the Regional Forester affects all National Forests in the Intermountain Region, it will appear in:

Salt Lake Tribune, Salt Lake, Utah.

Ashley National Forest

Ashley Forest Supervisors decisions:

Vernal Express, Vernal, Utah.

Vernal District Ranger decisions:

Vernal Express, Vernal, Utah.

Flaming Gorge District Ranger for decisions affecting Wyoming:

Casper Star Tribune, Casper, Wyoming.

Flaming Gorge District Ranger for decisions affecting Utah:

Vernal Express, Vernal, Utah.

Roosevelt and Duchesne District Ranger decisions:

Uintah Basin Standard, Roosevelt, Utah.

Boise National Forest

Boise Forest Supervisor decisions:

The Idaho Statesman: Boise, Idaho.
Mountain Home District Ranger decisions:
The Idaho Statesman: Boise, Idaho.
Idaho City District Ranger decisions:
The Idaho Statesman, Boise, Idaho.
Cascade District Ranger decisions:
The Long Valley Advocate, Cascade, Idaho.
Lowman District Ranger decisions:
The Idaho World, Garden Valley, Idaho.
Emmett District Ranger decisions:
The Messenger-Index, Emmett, Idaho.

Bridger-Teton National Forest

Bridger-Teton Forest Supervisor decisions:
Casper Star-Tribune, Casper, Wyoming.
Jackson District Ranger decisions:
Casper Star-Tribune, Casper, Wyoming.
Buffalo District Ranger decisions:
Casper Star-Tribune, Casper, Wyoming.
Big Piney District Ranger decisions:
Casper Star-Tribune, Casper, Wyoming.
Pinedale District Ranger decisions:
Casper Star-Tribune, Casper, Wyoming.
Greys River District Ranger decisions:
Casper Star-Tribune, Casper, Wyoming.
Kemmerer District Ranger decisions:
Casper Star-Tribune, Casper, Wyoming.

Caribou-Targhee National Forest

Caribou-Targhee Forest Supervisor decisions for the Caribou portion:
Idaho State Journal, Pocatello, Idaho.
Soda Springs District Ranger decisions:
Idaho State Journal, Pocatello, Idaho.
Montpelier District Ranger decisions:
Idaho State Journal, Pocatello, Idaho.
Westside District Ranger decisions:
Idaho State Journal, Pocatello, Idaho.
Caribou-Targhee Forest Supervisor decisions for the Targhee Portion:
The Post Register, Idaho Falls, Idaho.
Dubois District Ranger decisions:
The Post Register, Idaho Falls, Idaho.
Island Park District Ranger decisions:
The Post Register, Idaho Falls, Idaho.
Ashton District Ranger decisions:
The Post Register, Idaho Falls, Idaho.
Palisades District Ranger decisions:
The Post Register, Idaho Falls, Idaho.
Teton Basin District Ranger decisions:
The Post Register, Idaho Falls, Idaho.

Dixie National Forest

Dixie Forest Supervisor decisions:
The Daily Spectrum, St. George, Utah.
Pine Valley District Ranger decisions:
The Daily Spectrum, St. George, Utah.
Cedar City District Ranger decisions:
The Daily Spectrum, St. George, Utah.
Powell District Ranger decisions:
The Daily Spectrum, St. George, Utah.
Escalante District Ranger decisions:
The Daily Spectrum, St. George, Utah.
Teasdale District Ranger decisions:
The Daily Spectrum, St. George, Utah.

Fishlake National Forest

Fishlake Forest Supervisor decisions:
Richfield Reaper, Richfield, Utah.
Loa District Ranger decisions:
Richfield Reaper, Richfield, Utah.
Richfield District Ranger decisions:
Richfield Reaper, Richfield, Utah.
Beaver District Ranger decision:
Richfield Reaper, Beaver, Utah.
Fillmore District Ranger decisions:
Richfield Reaper, Fillmore, Utah.

Humboldt-Toiyabe National Forests

Humboldt-Toiyabe Forest Supervisor decisions for the Humboldt portion:
Elko Daily Free Press, Elko, Nevada.
Humboldt-Toiyabe Forest Supervisor decisions for the Toiyabe portion:
Reno Gazette-Journal, Reno, Nevada.
Sierra Ecosystem Coordination Center (SECO):
Carson District Ranger decisions:
Mammoth Times, Mammoth Lakes, California.
Bridgeport District Ranger, decisions:
The Review-Herald, Mammoth Lakes, California.
Spring Mountain National Recreation Area Ecosystem (SMNRAE):
Spring Mountain National Recreation Area District Ranger decisions:
Las Vegas Review Journal, Las Vegas, Nevada.
Central Nevada Ecosystem (CNECO):
Austin District Ranger decisions:
Reno Gazette-Journal, Reno, Nevada.
Tonopah District Ranger decisions:
Tonopah Times Bonanza-Goldfield News, Tonopah, Nevada.
Ely District Ranger decisions:
Ely Daily Times, Ely, Nevada.
Northeast Nevada Ecosystem (NNECO):
Mountain City District Ranger decisions:
Elko Daily Free Press, Elko, Nevada.
Ruby Mountains District Ranger decisions:
Elko Daily Free Press, Elko, Nevada.
Jarbidge District Ranger decisions:
Elko Daily Free Press, Elko, Nevada.
Santa Rosa District Ranger decisions:
Humboldt Sun, Winnemucca, Nevada.

Manti-LaSal National Forest

Manti-LaSal Forest Supervisor decisions:
Sun Advocate, Price, Utah.
Sanpete District Ranger decisions:
The Pyramid, Mt. Pleasant, Utah.
Ferron District Ranger decisions:
Emery County Progress, Castle Dale, Utah.
Price District Ranger decisions:
Sun Advocate, Price, Utah.
Moab District Ranger decisions:
The Times Independent, Moab, Utah.
Monticello District Ranger decisions:
The San Juan Record, Monticello, Utah.

Payette National Forest

Payette Forest Supervisor decisions:
Idaho Statesman, Boise, Idaho.
Weiser District Ranger decisions:
Signal American, Weiser, Idaho.
Council District Ranger decisions:
Council Record, Council, Idaho.
New Meadows, McCall, and Krassel District Ranger decisions:
Star News, McCall, Idaho.

Salmon-Challis National Forests

Salmon-Challis Forest Supervisor decisions for the Salmon portion:
The Recorder-Herald, Salmon, Idaho.
Salmon-Challis Forest Supervisor decisions for the Challis portion:
The Challis Messenger, Challis, Idaho.
North Fork District Ranger decisions:
The Recorder-Herald, Salmon, Idaho.
Leadore District Ranger decisions:
The Recorder-Herald, Salmon, Idaho.
Salmon/Cobalt District Ranger decisions:
The Recorder-Herald, Salmon, Idaho.
Middle Fork District Ranger decisions:
The Challis Messenger, Challis, Idaho.
Challis District Ranger decisions:
The Challis Messenger, Challis, Idaho.
Yankee Fork District Ranger decisions:
The Challis Messenger, Challis, Idaho.
Lost River District Ranger decisions:
The Challis Messenger, Challis, Idaho.

Sawtooth National Forest

Sawtooth Forest Supervisor decisions:
The Times News, Twin Falls, Idaho.
Burley District Ranger decisions:
Ogden Standard Examiner, Ogden, Utah, for those decisions on the Burley District involving the Raft River Unit.
South Idaho Press, Burley, Idaho, for decisions issued on the Idaho portions of the Burley District.
Twin Falls District Ranger decisions:
The Times News, Twin Falls, Idaho.
Ketchum District Ranger decisions:
Idaho Mountain Express, Ketchum, Idaho.
Sawtooth National Recreation Area:
Challis Messenger, Challis, Idaho.
Fairfield District Ranger decisions:
The Times News, Twin Falls, Idaho.

Uinta National Forest

Uinta Forest Supervisor decisions:

The Daily Herald, Provo, Utah.

Pleasant Grove District Ranger decisions:

The Daily Herald, Provo, Utah.

Heber District Ranger decisions:

The Daily Herald, Provo, Utah, and

Spanish Fork District Ranger decisions:

The Daily Herald, Provo, Utah.

Wasatch-Cache National Forest

Wasatch-Cache Forest Supervisor decisions:

Salt Lake Tribune, Salt Lake City, Utah.

Salt Lake District Ranger decisions:

Salt Lake Tribune, Salt Lake City, Utah.

Kamas District Ranger decisions:

Salt Lake Tribune, Salt Lake City, Utah.

Evanston District Ranger decisions:

Uintah County Herald, Evanston, Wyoming.

Mountain View District Ranger decisions:

Uintah County Herald, Evanston, Wyoming.

Ogden District Ranger decisions:

Ogden Standard Examiner, Ogden, Utah.

Logan District Ranger decisions:

Logan Herald Journal, Logan, Utah.

Dated: May 31, 2001.

Jack A. Blackwell,

Regional Forester.

[FR Doc. 01–27096 Filed 10–29–01; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Tonto, Prescott, and Coconino National Forests

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to developing a Comprehensive River Management Plan for the Verde Wild and Scenic River.

SUMMARY: The Tonto, Prescott, and Coconino National Forests are initiating the development of a Comprehensive River Management Plan for the Verde Wild and Scenic River. A portion of the Verde River was adopted into the Wild and Scenic River System by act of Congress in the Arizona Wilderness Act (Pub. L. 98–406) on August 28, 1984.

The Verde Wild and Scenic River is a 40.4 mile section (14.5 miles Scenic—upper section and 25.9 miles Wild—lower section) of the Verde River beginning near an area known as Beasley Flat (T.13N., R.5E., S.26) and ending at the mouth of Red Creek (T.11N., R.6E., S. 11 Gila and Salt River Base Meridian). The land area comprising the river includes reserved public domain inside a one-quarter mile wide corridor on both sides of the centerline of the Verde River between the end points above.

DATES: Comments in response to this Notice of Intent concerning the scope of the analysis should be received in writing by December 28, 2001, at the address listed below.

ADDRESSES: Send written comments to USDA Forest Service, Tonto National Forest, ATTN: Carl Taylor, 2324 E. McDowell Road, Phoenix, Arizona 85006.

Responsible Official: The Forest Supervisors for the Coconino, Prescott, and Tonto National Forests will be the responsible officials and will decide on the elements of a Comprehensive River Management Plan for the Verde Wild and Scenic River.

FOR FURTHER INFORMATION CONTACT: Carl Taylor, Tonto National Forest, 2324 E. McDowell Road, Phoenix, Arizona 85006, (602) 225–5230.

SUPPLEMENTARY INFORMATION: The Verde Wild and Scenic River is part of a much larger complex watershed. The Wild and Scenic River segment itself is in the lower portions of the watershed and can be characterized as a rich riparian and aquatic zone surrounded by Upper Sonoran and Sonoran desert vegetation—desert shrub featuring pinyon and juniper interspersed with a few grasslands. I has many tributaries exhibiting very diverse characteristics and creating many broadly diverse habitats.

The outstandingly remarkable values for the Verde Wild and Scenic River are scenic, fish and wildlife, and historic and cultural. Additionally, although not classified as outstandingly remarkable values, the river also has geologic and recreational values. The Comprehensive River Management Plan will focus on protecting the river's free-flowing conditions and water quality in addition to its outstanding remarkable values.

The planning process involves a number of steps over the next 30 months:

A. Publish Proposed Action for public review by the end of January 2002.

B. Release Draft Comprehensive River Management Plan and environmental document for public review by the end of June 2003.

C. Publish Final Comprehensive River Management Plan by March 2004. In addition to these planning steps, the Forest Service will also be providing 6-month progress reports to all who express an interest in being kept informed.

Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets.

The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address.

Dated: October 24, 2001.

Eleanor S. Towns,

Regional Forester.

[FR Doc. 01–27211 Filed 10–29–01; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Information Systems Technical Advisory Committee; Notice of Partially Closed Meeting

The Information System Technical Advisory Committee (ISTAC) will meet on November 14 & 15, 2001, 9 a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street between Pennsylvania Avenue and Constitution Avenue, NW., Washington, DC. The ISTAC advises the Office of the Assistant Secretary for Export Administration on technical questions that affect the level of export controls applicable to information systems equipment and technology.

Agenda

November 14

Public Session

1. Opening remarks and introductions.
2. Comments or presentations from the public.
3. Membership coverage of Control List Categories 3 (electronics), 4 (computers), and 5 (telecommunications and information security).
4. Intel IA64 Roadmap.

5. Applied Micro Devices (AMD) Roadmap.

6. Ultra-Wide Band (UWB) technology.

November 14–15

Closed Session

7. Discussion of matters properly classified under Executive Order 12958, dealing with U.S. export control programs and strategic criteria related thereto.

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the ISTAC. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the ISTAC suggests that public presentation materials or comments be forwarded before the meeting to the address listed below: Ms. Lee Ann Carpenter, OSIES/EA/BXA MS: 3876, U.S. Department of Commerce, 14th St. & Constitution Ave., NW., Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on September 7, 2001, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of this Committee and of any Subcommittees thereof dealing with the classified materials listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3) of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of this Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, Department of Commerce, Washington, DC. For more information or copies of the minutes call Lee Ann Carpenter, 202–482–2583.

Dated: October 24, 2001.

Lee Ann Carpenter,

Committee Liaison Officer.

[FR Doc. 01–27178 Filed 10–29–01; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of opportunity to request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with section 351.213 (2001) of the Department of Commerce (the Department) Regulations, that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity to Request a Review

Not later than the last day of November 2001, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in November for the following periods:

	Periods
Antidumping Duty Proceedings	
Argentina: Barbed Wire & Barbless Fencing Wire A–357–405	11/1/00—10/31/01
Brazil: Circular Welded Non-Alloy Steel Pipe A–351–809	11/1/00—10/31/01
Mexico: Circular Welded Non-Alloy Steel Pipe A–201–805	11/1/00—10/31/01
Republic of Korea: Circular Welded Non-Alloy Steel Pipe A–580–809	11/1/00—10/31/01
Taiwan: Circular Welded Non-Alloy Steel Pipe A–583–814	11/1/00—10/31/01
Collated Roofing Nails A–583–826	11/1/00—10/31/01
The People's Republic of China:	
Collated Roofing Nails A–570–850	11/1/00—10/31/01
Fresh Garlic A–570–831	11/1/00—10/31/01
Paper Clips A–570–826	11/1/00—10/31/01
Countervailing Duty Proccedings	
None.	
Suspension Agreements	
Mexico:	
Fresh Tomatoes A–201–820	11/1/00—10/31/01

In accordance with section 351.213(b) of the regulations, an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Six copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Enforcement, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with section 351.303(f)(l)(i) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of November 2001. If the Department does not receive, by the last day of November 2001, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: October 18, 2001.

Holly A. Kuga,

Senior Office Director, Group II, Office 4, AD/CVD Enforcement.

[FR Doc. 01–27296 Filed 10–26–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 091801C]

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Issuance of modification 2 to permit 1067.

SUMMARY: NMFS has issued modification 2 to permit 1067 to the California Department of Fish and Game (CDFG) that authorizes takes of Endangered Species Act-listed anadromous fish species for the purpose of scientific research and enhancement, subject to certain conditions set forth therein.

ADDRESSES: Copies of the permits may be obtained from Protected Resources Division, NMFS, 777 Sonoma Avenue, Room 325, Santa Rosa, California 95404–6528, Phone: (707) 575–6053, Fax: (707) 578–3434.

FOR FURTHER INFORMATION CONTACT: Daniel Logan, Protected Resources Division, NMFS, Santa Rosa, California, (707) 575–6053, e-mail: *dan.logan@noaa.gov*.

SUPPLEMENTARY INFORMATION: The following species and evolutionary significant units (ESUs) are covered in this notice:

Coho salmon (*Oncorhynchus kisutch*): Threatened, naturally produced and artificially propagated, Central California Coast (CCC), and naturally produced Southern Oregon/Northern California Coast (SONCC).

Permit Modifications Issued

Notice was published on May 10, 2001, that the CDFG applied for a modification to permit 1067 to take threatened CCC coho salmon, in addition to previously authorized takes of coho salmon. Modification 2 to Permit 1067 was issued on August 31, 2001, authorizing takes of adult and juvenile, threatened, CCC coho salmon for six scientific research and enhancement activities: (1) a pilot study to examine the efficacy of a captive broodstock program using naturally-produced coho salmon, (2) develop indexes of abundance, (3) carcass counts, (4) redd surveys, (5) acquisition of tissue and scale samples for genetic analysis; and (6) habitat quality evaluation.

The original permit authorized the CDFG to capture, handle, take tissues, and release up to 16,500 juvenile CCC coho salmon, and to take tissue samples from up to 1,000 adult CCC coho salmon. Indirect mortalities associated with the CDFG research activities were not to exceed 500 juvenile CCC coho salmon. Modification 1 of Permit 1067 contained only minor modifications to permit format and notification requirements, however, no changes in take limits.

For Modification 2, the following changes were incorporated into the take limits for the Permit: (1) the CDFG is authorized to capture, rear, and retain 300 juvenile CCC coho salmon for the purpose of developing an experimental captive broodstock; (2) the CDFG is authorized to release up to 200,000 ESA-listed juvenile CCC coho salmon derived from the pilot captive broodstock program; (3) the number of adult coho salmon carcasses that can be collected and sampled for tissues has been increased to 1,500 fish; (4) the number of indirect mortalities associated with research activities has been increased to 700 juvenile CCC coho salmon; and (5) the expiration date of Permit 1067 has been extended 5 years until June 30, 2007.

The issuance of the permit modifications and the new permit is based on a finding that such permits: (1) were applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: October 24, 2001.

Margaret Lorenz,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 01–27311 Filed 10–29–01; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Wool and Man-Made Fiber Textile Products Produced or Manufactured in Bulgaria

October 24, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 30, 2001.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Category 442 is being increased for swing, reducing the limit for Categories 410/624 to account for the swing being applied to Category 442.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 65 FR 82328, published on December 28, 2000). Also see 65 FR 66719, published on November 7, 2000.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 24, 2001.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 27, 2000, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain wool and man-made fiber textile products, produced or manufactured in Bulgaria and exported during the twelve-month period which began on January 1, 2001 and extends through December 31, 2001.

Effective on October 30, 2001, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
410/624	3,129,249 square meters of which not more than 877,262 square meters shall be in Category 410.
442	19,188 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2000.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 01–27220 Filed 10–29–01; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Hong Kong

October 24, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 30, 2001.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing and special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 65 FR 82328, published on December 28, 2000). Also see 65 FR 75674, published on December 4, 2000.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 24, 2001.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 28, 2000, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Hong Kong and exported during the twelve-month period which began on January 1, 2001 and extends through December 31, 2001.

Effective on October 30, 2001, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Group I	
200–227, 300–326, 360–363, 369(1) [2], 369pt. [3], 400–414, 464, 469pt. [4], 600–629, 666, 669pt. [5] and 670, as a group.	252,759,667 square meters equivalent.
Group II	
237, 239pt. [6], 331–348, 350–352, 359(1) [7], 359(2) [8], 359pt. [9], 431, 433–438, 440–448, 459pt. [10], 631, 633–652, 659(1) [11], 659(2) [12], 659pt. [13], and 443/444/643/644/843/844(1), as a group.	909,825,220 square meters equivalent.
Sublevels in Group II	
359(1) (coveralls, overalls and jumpsuits).	700,257 kilograms.
659(1) (coveralls, overalls and jumpsuits).	752,576 kilograms.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2000.

[2] Category 369(1): only HTS number 6307.10.2005.

[3] Category 369pt.: all HTS numbers except 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020, 6406.10.7700 and HTS number in 369(1).

[4] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010 and 6406.10.9020.

[5] Category 669pt.: all HTS numbers except 5601.10.2000, 5601.22.0090, 5607.49.3000, 5607.50.4000 and 6406.10.9040.

[6] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[7] Category 359(1): only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010.

[8] Category 359(2): only HTS numbers 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070.

[9] Category 359pt.: all HTS numbers except 6406.99.1550 and HTS numbers in 359(1) and 359(2).

[10] Category 459pt.: all HTS numbers except 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[11] Category 659(1): only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[12] Category 659(2): only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[13] Category 659pt.: all HTS numbers except 6406.99.1510, 6406.99.1540 and HTS numbers in 659(1) and 659(2).

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.01–27221 Filed 10–29–01; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Indonesia

October 24, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 30, 2001.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing, special shift, carryforward and the recrediting of unused carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 65 FR 82328, published on December 28, 2000). Also see 65 FR 69911, published on November 21, 2000.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 24, 2001.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 15, 2000, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man–made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Indonesia and exported during the twelve-month period which began on January 1, 2001 and extends through December 31, 2001.

Effective on October 30, 2001, you are directed to adjust the limits for the categories listed below, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Twelve-month restraint limit [1]
Levels in Group I	
219	12,167,650 square meters.
313–O [2]	24,079,690 square meters.
314–O [3]	72,895,964 square meters.
317–O [4]/326–O [5]/617	32,687,988 square meters of which not more than 5,220,052 square meters shall be in Category 326–O.
331/631	3,458,408 dozen pairs.
334/335	344,963 dozen.
340/640	2,208,129 dozen.
341	1,256,446 dozen.
347/348	2,512,951 dozen.
351/651	742,461 dozen.
360	1,875,823 numbers.
361	1,915,696 numbers.
433	13,223 dozen.
445/446	67,214 dozen.
447	20,661 dozen.
448	24,096 dozen.
604–A [6]	1,029,418 kilograms.
613/614/615	29,092,809 square meters.
618–O [7]	4,781,490 square meters.
619/620	12,429,273 square meters.
625/626/627/628/629–O [8].	28,816,191 square meters.
638/639	1,980,060 dozen.
641	3,355,774 dozen.
643	444,057 numbers.
645/646	1,158,288 dozen.
Group II	
201, 218, 220, 222–224, 226, 227, 237, 239pt. [9], 332, 333, 352, 359–O [10], 362, 363, 369–O [11], 400, 410, 414, 431, 434, 435, 436, 438, 440, 442, 444, 459pt. [12], 464, 469pt. [13], 603, 604–O [14], 606, 607, 621, 622, 624, 633, 649, 652, 659–O [15], 666, 669–O [16], 670–O [17], 831, 833–836, 838, 840, 842–846, 850–852, 858 and 859pt. [18], as a group.	146,249,008 square meters equivalent.
Subgroup in Group II	
400, 410, 414, 431, 434, 435, 436, 438, 440, 442, 444, 459pt., 464 and 469pt., as a group	3,308,326 square meters equivalent.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2000.

[2] Category 313–O: all HTS numbers except 5208.52.3035, 5208.52.4035 and 5209.51.6032.

[3] Category 314–O: all HTS numbers except 5209.51.6015.

[4] Category 317–O: all HTS numbers except 5208.59.2085.

[5] Category 326–O: all HTS numbers except 5208.59.2015, 5209.59.0015 and 5211.59.0015.

[6] Category 604–A: only HTS number 5509.32.0000.

[7] Category 618–O: all HTS numbers except 5408.24.9010 and 5408.24.9040.

[8] Category 625/626/627/628; Category 629–O: all HTS numbers except 5408.34.9085 and 5516.24.0085.

[9] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[10] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010 (Category 359–C); 6112.39.0010, 6112.49.0010, 6211.11.8010, 6211.11.8020, 6211.12.8010 and 6211.12.8020 (Category 359–S) and 6406.99.1550 (Category 359pt.).

[11] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S); 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020 and 6406.10.7700 (Category 369pt.).

[12] Category 459pt.: all HTS numbers except 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[13] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010 and 6406.10.9020.

[14] Category 604–O: all HTS numbers except 5509.32.0000 (Category 604–A).

[15] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010, 6211.12.1020 (Category 659–S); 6406.99.1510 and 6406.99.1540 (Category 659pt.).

[16] Category 669–O: all HTS numbers except 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020, 6305.39.0000 (Category 669–P); 5601.10.2000, 5601.22.0090, 5607.49.3000, 5607.50.4000 and 6406.10.9040 (Category 669pt.).

[17] Category 670–O: all HTS numbers except 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3031, 4202.92.9026 and 6307.90.9907 (Category 670–L).

[18] Category 859pt.: only HTS numbers 6115.19.8040, 6117.10.6020, 6212.10.5030, 6212.10.9040, 6212.20.0030, 6212.30.0030, 6212.90.0090, 6214.10.2000 and 6214.90.0090.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.01–27219 Filed 10–29–01; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Nepal

October 24, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of customs adjusting limits.

EFFECTIVE DATE: October 30, 2001.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for certain categories are being adjusted for swing.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 65 FR 82328, published on December 28, 2000). Also see 65 FR 66972, published on November 8, 2000.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 24, 2001.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 2, 2000, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man–made fiber textile products, produced or manufactured in Nepal and exported during the twelve-month period which began on January 1, 2001 and extends through December 31, 2001.

Effective on October 30, 2001, you are directed to adjust the limits for the following categories, as provided for under the terms of the current bilateral textile agreement between the Governments of the United States and Nepal:

Category	Adjusted twelve-month limit [1]
341	909,077 dozen.
363	8,698,466 numbers.
369–S [2]	1,073,735 kilograms.
641	440,931 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2000.

[2] Category 369–S: only HTS number 6307.10.2005.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 01–27222 Filed 10–29–01; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Pakistan

October 24, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 30, 2001.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing and special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 65 FR 82328, published on December 28, 2000). Also see 65 FR 66972, published on November 8, 2000.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 24, 2001.

Commissioner of Customs,

Department of the Treasury, Washington, DC

20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 2, 2000, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products produced or manufactured in Pakistan and exported during the twelve-month period which began on January 1, 2001 and extends through December 31, 2001.

Effective on October 30, 2001, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Specific limits	
314	9,103,492 square meters.
347/348	1,245,231 dozen.
625/626/627/628/629	109,427,527 square meters of which not more than 54,992,485 square meters shall be in Category 625; not more than 54,992,485 square meters shall be in Category 626; not more than 54,992,485 square meters shall be in Category 627; not more than 11,377,756 square meters shall be in Category 628; and not more than 54,992,485 square meters shall be in Category 629.
647/648	1,067,545 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2000.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.01–27223 Filed 10–29–01; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Sri Lanka

October 24, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 5, 2001.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota reopenings, refer to the Office of Textiles and Apparel website at http://www.otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing and the undoing of special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 65 FR 82328, published on December 28, 2000). Also see 65 FR 69503, published on November 17, 2000.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 24, 2001.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 13, 2000, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Sri Lanka and exported during the twelve-month period which began on January 1, 2001 and extends through December 31, 2001.

Effective on November 5, 2001, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
237	372,808 dozen.
351/651	536,582 dozen.
352/652	2,139,052 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2000.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 01–27217 Filed 10–29–01; 8:45 a.m.

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in Taiwan

October 24, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 5, 2001.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota reopenings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing, special shift and the partial undoing of special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 65 FR 82328, published on December 28, 2000). Also see 66 FR 11003, published on February 21, 2001.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 24, 2001.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on February 15, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Taiwan and exported during the twelve-month period which began on January 1, 2001 and extends through December 31, 2001.

Effective on November 5, 2001, you are directed to adjust the current limits for the following categories, as provided for under the terms of the current bilateral textile agreement:

Category	Twelve-month limit [1]
Sublevels in Group II	
331	518,826 dozen pairs.
347/348	1,371,787 dozen of which not more than 1,167,336 dozen shall be in Categories 347–W/348–W [2].
631	5,549,141 dozen pairs.
647/648	5,473,212 dozen of which not more than 5,210,035 dozen shall be in Categories 647–W/648–W [3].
Within Group II Subgroup	
350/650	149,222 dozen.
351	337,868 dozen.
651	522,731 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2000.

[2] Category 347–W: only HTS numbers 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.22.3030, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.42.4050, 6203.42.4060, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040; Category 348–W: only HTS numbers 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.22.3050, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.62.4055, 6204.62.4065, 6204.69.6010, 6204.69.9010, 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050.

[3] Category 647–W: only HTS numbers 6203.23.0060, 6203.23.0070, 6203.29.2030, 6203.29.2035, 6203.43.2500, 6203.43.3500, 6203.43.4010, 6203.43.4020, 6203.43.4030, 6203.43.4040, 6203.49.1500, 6203.49.2015, 6203.49.2030, 6203.49.2045, 6203.49.2060, 6203.49.8030, 6210.40.5030, 6211.20.1525, 6211.20.3820 and 6211.33.0030; Category 648–W: only HTS numbers 6204.23.0040, 6204.23.0045, 6204.29.2020, 6204.29.2025, 6204.29.4038, 6204.63.2000, 6204.63.3000, 6204.63.3510, 6204.63.3530, 6204.63.3532, 6204.63.3540, 6204.69.2510, 6204.69.2530, 6204.69.2540, 6204.69.2560, 6204.69.6030, 6204.69.9030, 6210.50.5035, 6211.20.1555, 6211.20.6820, 6211.43.0040 and 6217.90.9060.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 01–27218 Filed 10–29–01; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Revised Non-Foreign Overseas Per Diem Rates

AGENCY: DoD, Per Diem, Travel and Transportation Allowance Committee.

ACTION: Notice of revised Non-Foreign Overseas Per Diem Rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 221. This bulletin lists revisions in the per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and Possessions of the United States. AEA changes announced in Bulletin Number 194 remain in effect. Bulletin Number 221 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

EFFECTIVE DATE: November 1, 2001.

SUPPLEMENTARY INFORMATION: This document gives notice of revisions in per diem rates prescribed by the Per Diem Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. It supersedes Civilian Personnel Per Diem Bulletin Number 220. Distribution of Civilian Personnel Per Diem Bulletins by mail was discontinued. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of revisions in per diem rates to agencies and establishments outside the Department of Defense. For more information or questions about per diem rates, please contact your local travel office. The text of the Bulletin follows:

BILLING CODE 5001–08–M

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
THE ONLY CHANGES IN CIVILIAN BULLETIN 221 UPDATES RATES FOR COLD BAY, ALASKA, GUAM, AND SAIPAN, NORTHERN MARIANNA ISLANDS.				
ALASKA				
ANCHORAGE [INCL NAV RES]				
05/01 - 09/15	161	65	226	09/01/2001
09/16 - 04/30	89	57	146	09/01/2001
BARROW	140	75	215	05/01/2000
BETHEL	90	63	153	09/01/2001
CLEAR AB	80	55	135	09/01/2001
COLD BAY	153	60	213	11/01/2001
COLDFOOT	135	71	206	10/01/1999
COPPER CENTER	85	49	134	09/01/2001
CORDOVA	80	72	152	03/01/2000
CRAIG				
05/01 - 08/31	90	65	155	09/01/2001
09/01 - 04/30	77	64	141	09/01/2001
DEADHORSE	80	67	147	03/01/1999
DELTA JUNCTION	79	50	129	09/01/2001
DENALI NATIONAL PARK				
06/01 - 08/31	125	66	191	09/01/2001
09/01 - 05/31	90	63	153	09/01/2001
DILLINGHAM	95	60	155	09/01/2001
DUTCH HARBOR-UNALASKA	110	67	177	09/01/2001
EARECKSON AIR STATION	80	55	135	09/01/2001
EIELSON AFB				
05/01 - 09/15	149	66	215	09/01/2001
09/16 - 04/30	75	58	133	09/01/2001
ELMENDORF AFB				
05/01 - 09/15	161	65	226	09/01/2001
09/16 - 04/30	89	57	146	09/01/2001
FAIRBANKS				
05/01 - 09/15	149	66	215	09/01/2001
09/16 - 04/30	75	58	133	09/01/2001
FT. GREELY	79	50	129	09/01/2001
FT. RICHARDSON				
05/01 - 09/15	161	65	226	09/01/2001
09/16 - 04/30	89	57	146	09/01/2001
FT. WAINWRIGHT				
05/01 - 09/15	149	66	215	09/01/2001
09/16 - 04/30	75	58	133	09/01/2001
GLENNALLEN				
05/01 - 09/30	137	61	198	09/01/2001
10/01 - 04/30	89	56	145	09/01/2001
HEALY				
06/01 - 08/31	125	66	191	09/01/2001
09/01 - 05/31	90	63	153	09/01/2001
HOMER				
05/15 - 09/15	119	67	186	09/01/2001
09/16 - 05/14	79	63	142	09/01/2001

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
JUNEAU	109	65	174	09/01/2001
KAKTOVIK	165	75	240	01/01/2000
KAVIK CAMP	125	69	194	03/01/1999
KENAI-SOLDOTNA				
04/01 - 10/31	131	69	200	09/01/2001
11/01 - 03/31	86	65	151	09/01/2001
KENNICOTT	159	71	230	09/01/2001
KETCHIKAN	98	64	162	09/01/2001
KING SALMON				
05/01 - 10/01	160	80	240	09/01/2001
10/02 - 04/30	95	73	168	09/01/2001
KLAWOCK				
05/01 - 08/31	90	65	155	09/01/2001
09/01 - 04/30	77	64	141	09/01/2001
KODIAK	99	70	169	09/01/2001
KOTZEBUE				
09/01 - 04/30	95	62	157	10/01/2001
05/01 - 08/31	137	69	206	09/01/2001
KULIS AGS				
05/01 - 09/15	161	65	226	09/01/2001
09/16 - 04/30	89	57	146	09/01/2001
MCCARTHY	159	71	230	09/01/2001
METLAKATLA				
05/30 - 10/01	98	56	154	09/01/2001
10/02 - 06/01	78	54	132	09/01/2001
MURPHY DOME				
05/01 - 09/15	149	66	215	09/01/2001
09/16 - 04/30	75	58	133	09/01/2001
NOME	89	64	153	09/01/2001
NUIQSUT	175	53	228	09/01/2001
POINT HOPE	130	70	200	03/01/1999
POINT LAY	105	67	172	03/01/1999
PRUDHOE BAY	80	67	147	03/01/1999
SEWARD				
05/31 - 09/30	119	66	185	09/01/2001
10/01 - 05/30	74	61	135	09/01/2001
SITKA-MT. EDGECOMBE				
05/16 - 09/16	139	73	212	01/01/2000
09/17 - 05/15	129	72	201	01/01/2000
SKAGWAY	98	64	162	09/01/2001
SPRUCE CAPE	99	70	169	09/01/2001
TANANA	89	64	153	09/01/2001
UMIAT	172	78	250	09/01/2001
VALDEZ				
05/01 - 10/01	109	69	178	09/01/2001
10/02 - 04/30	99	68	167	09/01/2001
WAINWRIGHT	124	51	175	09/01/2001
WASILLA	95	60	155	01/01/2000
WRANGELL	98	64	162	09/01/2001
YAKUTAT	110	68	178	03/01/1999

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
[OTHER]	80	55	135	09/01/2001
AMERICAN SAMOA				
AMERICAN SAMOA	85	67	152	03/01/2000
GUAM				
GUAM (INCL ALL MIL INSTAL)	135	69	204	11/01/2001
HAWAII				
CAMP H M SMITH	112	65	177	06/01/2000
EASTPAC NAVAL COMP TELE AREA	112	65	177	06/01/2000
FT. DERUSSEY	112	65	177	06/01/2000
FT. SHAFTER	112	65	177	06/01/2000
HICKAM AFB	112	65	177	06/01/2000
HONOLULU (INCL NAV & MC RES CTR)	112	65	177	06/01/2000
ISLE OF HAWAII: HILO	84	58	142	05/01/2000
ISLE OF HAWAII: OTHER	89	54	143	05/01/2000
ISLE OF KAUAI				
05/01 - 11/30	143	69	212	06/01/2000
12/01 - 04/30	176	73	249	06/01/2000
ISLE OF KURE	65	41	106	05/01/1999
ISLE OF MAUI	143	72	215	05/01/2000
ISLE OF OAHU	112	65	177	06/01/2000
KEKAHA PACIFIC MISSILE RANGE FAC				
05/01 - 11/30	143	69	212	06/01/2000
12/01 - 04/30	176	73	249	06/01/2000
KILAUEA MILITARY CAMP	84	58	142	05/01/2000
LUALUALEI NAVAL MAGAZINE	112	65	177	06/01/2000
MCB HAWAII	112	65	177	06/01/2000
NAS BARBERS POINT	112	65	177	06/01/2000
PEARL HARBOR [INCL ALL MILITARY]	112	65	177	06/01/2000
SCHOFIELD BARRACKS	112	65	177	06/01/2000
WHEELER ARMY AIRFIELD	112	65	177	06/01/2000
[OTHER]	72	61	133	01/01/2000
JOHNSTON ATOLL				
JOHNSTON ATOLL	13	16	29	12/01/2000
MIDWAY ISLANDS				
MIDWAY ISLANDS [INCL ALL MILITAR	150	47	197	02/01/2000
NORTHERN MARIANA ISLANDS				
ROTA	149	72	221	04/01/2000
SAIPAN	150	88	238	11/01/2001
[OTHER]	55	72	127	04/01/2000
PUERTO RICO				
BAYAMON				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
CAROLINA				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
FAJARDO [INCL CEIBA & LUQUILLO]	82	54	136	01/01/2000
FT. BUCHANAN [INCL GSA SVC CTR,				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
HUMACAO	82	54	136	01/01/2000
LUIS MUNOZ MARIN IAP AGS				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
MAYAGUEZ	85	59	144	01/01/2000
PONCE	96	69	165	01/01/2000
ROOSEVELT RDS & NAV STA	82	54	136	01/01/2000
SABANA SECA [INCL ALL MILITARY]				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
SAN JUAN & NAV RES STA				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
[OTHER]	62	57	119	01/01/2000
VIRGIN ISLANDS (U.S.)				
ST. CROIX				
04/15 - 12/14	93	72	165	01/01/2000
12/15 - 04/14	129	76	205	01/01/2000
ST. JOHN				
04/15 - 12/14	219	84	303	01/01/2000
12/15 - 04/14	382	100	482	01/01/2000
ST. THOMAS				
04/15 - 12/14	163	73	236	01/01/2000
12/15 - 04/14	288	86	374	01/01/2000
WAKE ISLAND				
WAKE ISLAND	60	32	92	09/01/1998

[FR Doc. 01–27183 Filed 10–29–01; 8:45 am]
BILLING CODE 5001–08–C

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Inland Waterways Users Board; Meeting

AGENCY: Corps of Engineers, DoD.

ACTION: Notice of open meeting.

SUMMARY: In Accordance with 10 (a) (2) of the Federal Advisory Committee Act, Public Law (92–463), announcement is made of the next meeting of the Inland Waterways Users Board. The meeting will be held on November 30, 2001, in Dania, Florida, Sheraton Fort Lauderdale Airport Hotel (near to the Ft. Lauderdale-Hollywood International Airport), 1825 Griffin Road, (Tel. (954) 920-3500). Registration will begin at 7:30 am and the meeting is scheduled to adjourn at 1 pm. The meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee.

FOR FURTHER INFORMATION CONTACT: Mr. Norman T. Edwards, Headquarters, U.S. Army Corps of Engineers, CECW–PD, 441 G Street, NW, Washington, DC 20314–1000; Ph: 202–761–4559.

SUPPLEMENTARY INFORMATION: None.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 01–27317 Filed 10–29–01; 8:45 am]
BILLING CODE 3710–92–M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.128G]

Migrant and Seasonal Farmworkers Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2002

Purpose of Program: To provide grants for vocational rehabilitation services to individuals with disabilities who are migrant or seasonal farmworkers, (individuals who have been determined in accordance with rules prescribed by the Secretary of Labor), and to the family members who are residing with those individuals (whether or not those family members are individuals with disabilities).

Eligible Applicants: State designated agencies; nonprofit agencies working in collaboration with a State agency; and local agencies working in collaboration with a State agency.

Applications Available: November 5, 2001.

Deadline for Transmittal of Applications: February 5, 2002.

Deadline for Intergovernmental Review: April 6, 2002.

Estimated Available Funds: $639,498.

Estimated Range of Awards: $150,000—$170,000.

Estimated Average Size of Awards: $165,000.

Estimated Number of Awards: 4.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Priorities

Invitational Priority

We are particularly interested in applications that meet the following priority:

Applications for projects that provide vocational rehabilitation services including, but not limited to, vocational skills development, job placement, job training, occupational skills training programs, cultural awareness, language skills development, life skills (e.g., health, education, socialization), English as a Second Language, dissemination of employment information, and training workshops.

Under 34 CFR 75.105(c)(1) we do not give an application that meets the priority a competitive or absolute preferences over other applications.

Competitive Preference Priority

This competition focuses on projects designed to meet the priority in the notice of final competitive preference for this program, published in the **Federal Register** on November 22, 2000 (65 FR 70408). Under 34 CFR 75.105(c)(2)(i) we award up to an additional 10 points to an application, depending on the extent to which the application includes effective strategies for employing and advancing in employment qualified individuals with disabilities as project employees in projects awarded under this program. In determining the effectiveness of those strategies, we will consider the applicant's prior success, as described in the application, in employing and advancing in employment qualified individuals with disabilities.

The maximum score under the selection criteria for this program is 100 points; however, we will also use the competitive preference so that up to an additional 10 points may be earned by an applicant for a total possible score of 110 points.

For Applications Contact

Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html.*

Or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.128G.

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: (202) 205–8207. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

FOR FURTHER INFORMATION CONTACT: Mary E. Chambers, U.S. Department of Education, 400 Maryland Avenue, SW., room 3322, Switzer Building, Washington, DC 20202–2647. Telephone (202) 205–8435. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at:

http://www.access.gpo.gov/nara/index.html.

Program Authority: 29 U.S.C. 774.

Dated: October 25, 2001.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 01–27265 Filed 10–29–01; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Arms Control and Nonproliferation; Proposed Subsequent Arrangement

AGENCY: Department of Energy.

ACTION: Subsequent arrangement.

SUMMARY: This notice is being issued under the authority of section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160). The Department is providing notice of a proposed ''subsequent arrangement'' under the Agreement for Cooperation Concerning Civil Uses of Atomic Energy between the United States and Canada, and the Agreement for Cooperation Between the Government of the United States of America and the Government of the Republic of Korea Concerning Civil Uses of Atomic Energy.

This subsequent arrangement concerns the retransfer of eighteen 36-element fuel bundles and twelve 18-element fuel bundles, totaling 55,000 grams uranium (19.75 percent enriched U–235), from the AECL Chalk River Laboratories, Chalk River, Ontario, Canada, to the Korea Atomic Energy Research Institute (KAERI) Hanaro Reactor Center. The material, which is currently located Chalk River, Ontario, will be used by KAERI for additional fueling for the Hanaro Reactor Center.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, we have determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the publication of this notice.

Dated: October 24, 2001.

For the National Nuclear Security Administration.

Trisha Dedik,

Director, Office of Nonproliferation Policy.

[FR Doc. 01–27233 Filed 10–29–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Docket No. EA–167–B]

Application to Export Electric Energy; PG&E Energy Trading—Power, L.P.

AGENCY: Office of Fossil Energy, DOE

ACTION: Notice of application.

SUMMARY: PG&E Energy Trading—Power, L.P. (''PGET-Power'') has applied for renewal of its authority to transmit electric energy from the United States to Mexico pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before November 29, 2001.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Import/Export (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Rosalind Carter (Program Office) 202–586–7983 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On February 25, 1998, the Office of Fossil Energy (FE) of the Department of Energy (DOE) authorized PGET-Power to transmit electric energy from the United States to Mexico using the international electric transmission facilities of San Diego Gas & Electric Company, El Paso Electric Company, Central Power and Light Company, and Comision Federal de Electricidad, the national electric utility of Mexico. That two-year authorization was renewed on February 25, 2000, in Docket EA–167-A and will expire on February 23, 2002. On October 1, 2001, PGET-Power filed an application with FE for renewal of this export authority and requested that the order be issued for a 2-year term.

Procedural Matters

Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with sections 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the PG&E Energy Trading—Power, L.P. application to export electric energy to Mexico should be clearly marked with Docket EA–167–B. Additional copies are to be filed directly with Christopher A. Wilson, Assistant General Counsel, PG&E Energy Trading—Power, L.P., 7500 Old Georgetown Rd., Suite 1300, Bethesda, MD 20914–6161 *and* Ms. Sarah Barpoulis, Senior Vice President, PG&E Energy Trading—Power, L.P., 7500 Old Georgetown Rd., Suite 1300, Bethesda, MD 20814–6161.

DOE notes that the circumstances described in this application are virtually identical to those for which export authority had previously been granted in FE Order EA–179. Consequently, DOE believes that it has adequately satisfied its responsibilities under the National Environmental Policy Act of 1969 through the documentation of a categorical exclusion in the FE Docket EA–167 proceeding.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy homepage at *http://www.fe.doe.gov.* Upon reaching the Fossil Energy homepage, select ''Electricity Regulation'', then ''Pending Proceedings'' from the options menus.

Issued in Washington, DC, on October 24, 2001.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Import/Export, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 01–27231 Filed 10–30–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Solicitation for Expressions of Interest; Low-Cost Prototype Inverters

AGENCY: Department of Energy.

ACTION: Notice of solicitation for participation in competition to create low-cost inverters.

SUMMARY: The U.S. Department of Energy (DOE), in partnership with the National Association of State Energy Officials (NASEO), the Institute of Electrical and Electronics Engineers (IEEE), and other sponsors announces an opportunity for qualified colleges and university engineering programs to submit proposals to compete for a cash prize in a contest to build prototype, low-cost inverters. The contest is titled the 2003 Future Energy Challenge. This competition is open to schools with ABET-accredited engineering programs or the equivalent.

DATES: The due date for receipt of application requirements is November 30, 2001. Schools selected to compete in the 2001 Future Energy Challenge will be notified by January 1, 2002. The competition will be scheduled for the 2002 calendar year. Awards will be presented during Engineers Week in February 2003.

ADDRESSES: Additional information on this competition and application requirements are posted at *http://www.energychallenge.org.* The application requirements package will also provide information on how you might qualify for seed money from other sponsors. (**NOTE:** The agency or organization providing the seed money will solicit and evaluate the application requirements for seed funding, not DOE.)

SUPPLEMENTARY INFORMATION: The 2003 Future Energy Challenge seeks to dramatically improve the design and reduce the cost of DC–AC inverters and interface systems for use in distributed generation systems. DOE is joining with NASEO, and possibly others, to sponsor this competition with the goal of making these interface systems practical and cost effective. The objectives are to design elegant, manufacturable systems that would reduce the costs of commercial interface systems to $40 per kilowatt or less and, thereby, accelerate the deployment of distributed generation systems in homes and buildings. Schools with the capability to undertake the challenging task of designing complete systems or modifying commercial inverters to achieve design and manufacturability improvements that lead to achievement of the target cost reductions or better are invited to submit proposals to DOE to compete. A full prototype is sought that leads to a comprehensive hardware system. Schools should plan to form multi-disciplinary teams to address the energy source characteristics, design the power electronics, design packaging and thermal management systems, develop filtering and other interface sub-systems, analyze process costs and manufacturability, and perform economic and life-cycle cost analyses. The hardware prototypes judged as best will be tested by fuel cell

manufacturers, at DOE's National Energy Technology Center as interfaces for a fuel cell source. The school with the most cost-effective, fully functional design that can meet the aggressive cost target will win a prize of at least $50,000. Proposals will be judged by a distinguished panel of experts from the IEEE.

Issued in Washington, DC, on October 24, 2001.

Robert S. Kripowicz,

Acting Assistant Secretary for Fossil Energy.

[FR Doc. 01–27232 Filed 10–29–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–110–002]

Northern Natural Gas Company; Notice of Compliance Filing

October 24, 2001.

Take notice that on September 17, 2001, Northern Natural Gas Company (Northern) filed Sixty-Sixth Revised Sheet No. 1 to Northern's FERC Gas Tariff, Original Volume No. 2, to reflect the correct pagination to Sheet No. 1. Further, Sheet No. 1 has been updated to reflect the currently effective Table of Contents. 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).

Any person desiring to be heard or to make any protest with reference to said application should on or before November 14, 2001, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. 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 ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–27194 Filed 10–29–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC02–2–000, et al.]

Commonwealth Atlantic Limited Partnership, *et al.*; Electric Rate and Corporate Regulation Filings

October 23, 2001.

Take notice that the following filings have been made with the Commission:

1. Commonwealth Atlantic Limited Partnership and Commonwealth Atlantic Power LLC

[Docket Nos. EC02–2–000, ER91–215–001 and ER90–24–002]

Take notice that on October 17, 2001, Commonwealth Atlantic Limited Partnership and Commonwealth Atlantic Power LLC filed the last page of Mr. Heironymus' affidavit that was inadvertently excluded from his affidavit in Attachment 3 of the Application filed on October 9, 2001.

Comment date: November 5, 2001, in accordance with Standard Paragraph E at the end of this notice.

2. Rockland Electric Company and PJM Interconnection L.L.C.

[Docket Nos. EC02–7–000 and ER02–109–000]

Take notice that on October 17, 2001 Rockland Electric Company and PJM Interconnection, LLC (collectively, Applicants) tendered for filing a Joint Application for Approval of Transfer of Operational Control over Jurisdictional Facilities and Acceptance for Filing of Tariff Revisions, Executed Signature Pages, and Membership Agreement under sections 203 and 205 of the Federal Power Act. In addition, Applicants filed a correction to Page 4 of the Application on October 18, 2001.

Rockland requests approval of the transfer by November 30, 2001, and PJM seeks an effective date of February 1, 2002 for the tariff revisions, the executed signature pages, and the Membership Agreement.

Comment date: November 7, 2001, in accordance with Standard Paragraph E at the end of this notice.

3. American Transmission Systems, Inc.

[Docket No. ER02–110–000]

Take notice that on October 16, 2001, American Transmission Systems, Inc. filed with the Federal Energy Regulatory Commission (Commission) a Service Agreement to provide Firm Point-to-Point Transmission Service for CMS Marketing, Services and Trading Company, the Transmission Customer. Services are being provided under the American Transmission Systems, Inc. Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. ER99–2647–000. The proposed effective date under the Service Agreement is October 1, 2001 for the above mentioned Service Agreement in this filing.

Comment date: November 6, 2001, in accordance with Standard Paragraph E at the end of this notice.

4. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–111–000]

Take notice that on October 16, 2001, the Midwest Independent Transmission System Operator, Inc. (the Midwest ISO) tendered for filing with the Federal Energy Regulatory Commission (FERC or Commission) proposed revisions to the Midwest ISO Open Access Transmission tariff (OATT), FERC Electric Tariff, First Revised Volume No. 1.

The Midwest ISO has electronically served copies of its filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners, and Non-transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, the filing has been electronically posted on the Midwest ISO's website at *www.midwestiso.org* under the heading ''FERC Filings'' for other interested parties in this matter.

Comment date: November 6, 2001, in accordance with Standard Paragraph E at the end of this notice.

5. Mid-Continent Area Power Pool

[Docket No. ER02–112–000]

Take notice that on October 16, 2001, the Mid-Continent Area Power Pool, on behalf of its public utility members, filed with the Federal Energy Regulatory Commission (Commission) transmission service agreements for non-firm and short-term firm service with MAPP members.

Comment date: November 6, 2001, in accordance with Standard Paragraph E at the end of this notice.

6. Astoria Generating Company, L.P., Carr Street Generating Station, L.P., Erie Boulevard Hydropower, L.P., Liberty Electric Power, LLC, Twelvepole Creek, LLC, Orion Power MidWest, L.P.

[Docket No. ER02–113–000]

Take notice that on October 16, 2001, Astoria Generating Company, L.P., Carr Street Generating Station, L.P., Erie Boulevard Hydropower, L.P., Liberty Electric Power, LLC, Twelvepole Creek, LLC, and Orion Power MidWest, L.P. (collectively, the Orion Affiliates) tendered for filing with the Federal Energy Regulatory Commission (Commission) pursuant to Section 205 of the Federal Power Act, 16 USC 824d (1994), and Part 35 of the Commission's regulations, 18 CFR 35 (2001), revisions to their market-based rate tariffs to prohibit transactions with the franchised service territory utility affiliates of their proposed merger partner, Reliant Resources, Inc. while the proposed transaction is pending.

The Orion Affiliates request waiver of the prior notice requirements of Section 35.3 of the Commission's regulations, 18 CFR 35.3 (2001), to permit their filing to become effective September 27, 2001.

Comment date: November 6, 2001, in accordance with Standard Paragraph E at the end of this notice.

7. Southern Company Services, Inc.

[Docket No. ER02–114–000]

Take notice that on October 16, 2001, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company (APC), filed with the Federal Energy Regulatory Commission (Commission) the Interconnection Agreement (Agreement) between Mobile Energy Services Company, L.L.C. and APC. The Agreement allows Mobile Energy to interconnect its facility in Mobile, Alabama to and operate in parallel with APC's electric system. The Agreement was executed on September 18, 2001 and terminates in one (1) year. An effective date of September 18, 2001 has been requested.

Comment date: November 6, 2001, in accordance with Standard Paragraph E at the end of this notice.

8. Exelon Generation Company, LLC

[Docket No. ER02–115–000]

Take notice that on October 16, 2001, Exelon Generation Company, LLC (Exelon Generation), submitted for filing with the Federal Energy Regulatory Commission (Commission) a power sales service agreement between Exelon Generation and Madison Gas & Electric Company under Exelon Generation's wholesale power sales tariff, FERC Electric Tariff Original Volume No. 1.

Comment date: November 6, 2001, in accordance with Standard Paragraph E at the end of this notice.

9. Michigan Electric Transmission Company

[Docket No. ER02–116–000]

Take notice that on October 16, 2001, Michigan Electric Transmission Company (Michigan Transco) tendered for filing with the Federal Energy Regulatory Commission (Commission) an executed Service Agreements for Firm and Non-Firm Point-to-Point Transmission Service with California Electric Marketing, LLC (Customer) pursuant to the Joint Open Access Transmission Service Tariff filed on February 22, 2001 by Michigan Transco and International Transmission Company (ITC). Michigan Transco is requesting an effective date of October 1, 2001 for the Agreements.

Copies of the filed agreements were served upon the Michigan Public Service Commission, ITC, and the Customer.

Comment date: November 6, 2001, in accordance with Standard Paragraph E at the end of this notice.

10. Ameren Services Company

[Docket No. ER02–117–000]

Take notice that on October 17, 2001, Ameren Services Company (ASC) tendered for filing with the Federal Energy Regulatory Commission (Commission) Service Agreements for Firm Point-to-Point Transmission Service between ASC and Aquila Energy Marketing Corporation. ASC asserts that the purpose of the Agreements is to permit ASC to provide transmission service to Aquila Energy Marketing Corporation pursuant to Ameren's Open Access Transmission Tariff.

Comment date: November 7, 2001, in accordance with Standard Paragraph E at the end of this notice.

11. Entergy Services, Inc.

[Docket No. ER02–118–000]

Take notice that on October 17, 2001, Entergy Services, Inc., on behalf of Entergy Gulf States, Inc., tendered for filing with the Federal Energy Regulatory Commission (Commission) a unilaterally executed Interconnection and Operating Agreement with Bayou Cove Peaking Power, LLC (Bayou Cove), and a Generator Imbalance Agreement with Bayou Cove.

Comment date: November 7, 2001, in accordance with Standard Paragraph E at the end of this notice.

12. Unitil Power Corp.

[Docket No. ER02–119–000]

Take notice that on October 17, 2001, Unitil Power Corp. (UPC) tendered for filing with the Federal Energy Regulatory Commission (Commission) a service agreement between UPC and Engage Energy America L.L.C. for service under UPC's Market-Based Power Sales Tariff. This Tariff was accepted for filing by the Commission on September 25, 1997, in Docket No. ER97–2460–000. UPC requests an effective date of October 1, 2001 for the service agreement with Engage Energy America L.L.C.

Comment date: November 7, 2001, in accordance with Standard Paragraph E at the end of this notice.

13. Fitchburg Gas and Electric Light Company

[Docket No. ER02–120–000]

Take notice that on October 17, 2001 Fitchburg Gas and Electric Light Company (Fitchburg) tendered for filing with the Federal Energy Regulatory Commission (Commission) a notice of termination of a service agreement with Engage Energy US, L.P. under Fitchburg's FERC Electric Tariff No. 3.

Fitchburg requests an effective date of December 12, 2001.

Comment date: November 7, 2001, in accordance with Standard Paragraph E at the end of this notice.

14. Orange and Rockland Utilities, Inc.

[Docket No. ER02–121–000]

Take notice that on October 17, 2001, Orange and Rockland Utilities, Inc. and Rockland Electric Company (collectively Applicants) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Revised Power Supply Agreement. The Applicants request that the Commission permit the rate schedule to become effective on December 1, 2001.

Comment date: November 7, 2001, in accordance with Standard Paragraph E at the end of this notice.

15. Cinergy Services, Inc.

[Docket No. ER02–122–000]

Take notice that on October 17, 2001, Cinergy Services, Inc. (Cinergy) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Notice of Name Change from New Energy, Inc. to AEWS New Energy, Inc. Cinergy respectfully requests waiver of notice to permit the Notice of Name Change to be made

effective as of the date of the Notice of Name Change.

A copy of the filing was served upon AES New Energy, Inc.

Comment date: November 7, 2001, in accordance with Standard Paragraph E at the end of this notice.

16. FirstEnergy Solutions Corp.

[Docket No. ER02–123–000]

Take notice that on October 18, 2001, FirstEnergy Solutions Corp. (Solutions) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Confirmation Form for sale of off-peak energy to Jersey Central Power & Light Company and Pennsylvania Electric Company from October 1 through December 31, 2001. Solutions has asked for waiver of any applicable requirements in order to make the Confirmation Form effective as of October 1, 2001.

Comment date: November 8, 2001, in accordance with Standard Paragraph E at the end of this notice.

17. Rainy River Energy Corporation—Taconite Harbor

[Docket No. ER02–124–000]

Take notice that on October 18, 2001, Rainy River Energy Corporation—Taconite Harbor (RRTH) filed with the Federal Energy Regulatory Commission (Commission) an application for an order authorizing RRTH to make wholesale sales of electric power at market-based rates.

Comment date: November 8, 2001, in accordance with Standard Paragraph E at the end of this notice.

18. Progress Energy, Inc. on behalf of Florida Power Corporation

[Docket No. ER02–125–000]

Take notice that on October 18, 2001, Florida Power Corporation (FPC) filed with the Federal Energy Regulatory Commission (Commission) a Service Agreement with Ameren Energy, Inc. under FPC's Short-Form Market-Based Wholesale Power Sales Tariff (SM–1), FERC Electric Tariff No. 10. A copy of this filing was served upon the Florida Public Service Commission and the North Carolina Utilities Commission.

FPC is requesting an effective date of September 19, 2001 for this Agreement.

Comment date: November 8, 2001, in accordance with Standard Paragraph E at the end of this notice.

19. Mid-Continent Area Power Pool

[Docket No. ER02–126–000]

Take notice that on October 18, 2001, the Mid-Continent Area Power Pool, on behalf of its public utility members, filed with the Federal Energy Regulatory Commission (Commission) a service agreement with ENMAX Energy Marketing, Inc. under MAPP Schedule R.

Comment date: November 8, 2001, in accordance with Standard Paragraph E at the end of this notice.

20. Mid-Continent Area Power Pool

[Docket No. ER02–127–000]

Take notice that on October 18, 2001, the Mid-Continent Area Power Pool, on behalf of its public utility members, filed with the Federal Energy Regulatory Commission (Commission) a long term, short-term firm and non-firm transmission service agreements under MAPP Schedule F.

Comment date: November 8, 2001, in accordance with Standard Paragraph E at the end of this notice.

21. PPL Electric Utilities Corporation

[Docket No. ER02–128–000]

Take notice that on October 18, 2001, PPL Electric Utilities Corporation (PPL Electric) and Williams Generation Company—Hazleton (WGC) filed with the Federal Energy Regulatory Commission (Commission) an Interconnection Agreement between PPL Electric and WGC. PPL Electric and WGC request an effective date of October 19, 2001 for the Interconnection Agreement.

Comment date: November 8, 2001, in accordance with Standard Paragraph E at the end of this notice.

22. Southern California Edison Company

[Docket No. ER02–129–000]

Take notice that on October 18, 2001, Southern California Edison Company (SCE) tendered for filing with the Federal Energy Regulatory Commission (Commission) revisions to the Amended and Restated Radial Lines Agreement (RLA) between SCE and Reliant Energy Coolwater, L.L.C. (Reliant).

The revisions to the RLA reflect the costs for removal and installation of capital equipment on the Kramer-Coolwater No. 1 Line at SCE's Kramer Substation, which are planned to be in service in November 2001. Copies of this filing were served upon the Public Utilities Commission of the State of California and Reliant.

Comment date: November 8, 2001, in accordance with Standard Paragraph E at the end of this notice.

23. Entergy Services, Inc.

[Docket No. ER02–130–000]

Take notice that on October 18, 2001, Entergy Services, Inc., on behalf of Entergy Louisiana, Inc., tendered for filing with the Federal Energy Regulatory Commission (Commission) a unilaterally executed Interconnection and Operating Agreement with CII Carbon LLC (CII Carbon), and a Generator Imbalance Agreement with CII Carbon.

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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–27193 Filed 10–29–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

October 24, 2001.

a. *Application Type:* Application to Amend License for the Ozark Beach Project.

b. *Project No:* 2221–027.

c. *Date Filed:* August 08, 2001.

d. *Applicant:* Empire District Electric Company.

e. *Name of Project:* Ozark Beach Project.

f. *Location:* The project is located on the White River in Taney County, Missouri.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Tom Snyder, Empire District Electric Company, 3135 State Highway ''Y'', Forsyth, MO 65653. Tel: (417) 625–5100 ext. 2580.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Vedula Sarma at (202) 219–3273 or by e-mail at *vedula.sarma@ferc.fed.us.*

j. *Deadline for filing comments and/or motions:* November 30, 2001.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Please include the project number (2221–027) on any comments or motions filed.

k. *Description of Filing:* The licensee proposes to replace the four 1930 vintage Francis waterwheels, with new stainless steel waterwheels that are being designed to fit in the same hole and bolt to the same shaft and generator as the original wheel. The new waterwheel will pass approximately 300 cfs and thereby increases the total hydraulic capacity of the plant from 5,800 to 7,200 cfs. Even though, the turbine capacity would be increased by 30 percent, the installed capacity would not change since there are no plans to upgrade the generators.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. 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).

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 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.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST '', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 01–27195 Filed 10–29–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Request To Use Alternative Procedures in Preparing a License Application

October 24, 2001.

Take notice that the following request to use alternative procedures to prepare a license application has been filed with the Commission.

a. *Type of Application:* Request to use alternative procedures to prepare an original license application.

b. *Project No.:* 11894.

c. *Date filed:* October 19, 2001.

d. *Applicant:* Rugraw, Inc.

e. *Name of Project:* Lassen Lodge Project.

f. *Location:* On the South Fork Of Battle Creek, near the town of Mineral in Tehama County, California. The project would not be located on federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a)–825(r).

h. *Applicant Contact:* Arthur Hagood, Vice President, Synergics Centre, Synergics Energy Services (Synergics), 191 Main Street, Annapolis, MD 21401; 410–268–8820.

i. *FERC Contact:* Alan Mitchnick at (202) 219–2826; e-mail *Alan.Mitchnick@ferc.fed.us.*

j. *Deadline for Comments:* November 23, 2001.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

k. The proposed project would require the construction of: (1) An 80-foot-long diversion structure with a maximum height of 6 feet; (2) about 7,000 feet of low-pressure pipeline and about 12,000 feet of high-pressure pipeline; (3) a powerhouse with an installed capacity of 7 megawatts; and (4) 10 miles of 60-kilovolt transmission line.

l. A copy of the request to use alternative procedures 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). A copy is also available for inspection and reproduction at the address in item h above.

m. Synergics, on behalf of Rugraw, Inc. has demonstrated that it has made an effort to contact all federal and state resources agencies, non-governmental organizations (NGO), and others affected by the project. Synergics has also demonstrated that a consensus exists that the use of alternative procedures is appropriate in this case. Synergics has submitted a communications protocol that is supported by the stakeholders.

The purpose of this notice is to invite any additional comments on Synergics' request to use the alternative procedures, pursuant to Section 4.34(i) of the Commission's regulations. Additional notices seeking comments on the specific project proposal, interventions and protests, and recommended terms and conditions will be issued at a later date. Synergics will complete and file a preliminary Environmental Assessment, in lieu of Exhibit E of the license application. This differs from the traditional process, in which an applicant consults with agencies, Indian tribes, NGOs, and other parties during preparation of the license application and before filing the application, but the Commission staff

performs the environmental review after the application is filed. The alternative procedures are intended to simplify and expedite the licensing process by combining the pre-filing consultation and environmental review processes into a single process, to facilitate greater participation, and to improve communication and cooperation among the participants.

Synergics has contacted federal and state resources agencies, NGOs, elected officials, environmental groups, and the public regarding the Lassen Lodge Project. Synergics intends to file 6-month progress reports during the alternative procedures process.

David P. Boergers,

Secretary.

[FR Doc. 01–27196 Filed 10–29–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

October 24, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of Preliminary Permit Application.

b. *Project No.:* 12060–000.

c. *Date filed:* July 2, 2001, amended October 15, 2001.

d. *Applicant:* Mark R. Frederick.

e. *Name of Project:* Rock Creek Hydroelectric Energy Project.

f. *Location:* Would utilize the existing Wise Canal and Rock Creek Lake of Pacific Gas & Electric Company's Drum-Spaulding Project No. 2310, in Placer County, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Mark R. Frederick, 17825 Crother Hills Road, Meadow Vista, CA 95722, (530) 887–1984.

i. *FERC Contact:* James Hunter, (202) 219–2839.

j. *Deadline for filing comments and or motions:* 60 days from the issue date of this notice. Filings already made in this proceeding need not be refiled.

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–12060–000) on any comments or motions filed.

k. *Description of Project:* The Applicant has withdrawn his preliminary permit application for the Rock Creek Lake Outlet Project No. 12069 and combined that project with the one first proposed as the PG&E Wise Canal Project No. 12060. The proposed project, as amended, using PG&E's existing Wise Canal and Rock Creek Lake, would consist of: (1) A proposed remotely controlled gated intake structure at an existing diversion dam on the canal above the lake, (2) a proposed 4,000-foot-long, 6-foot-diameter penstock, (3) a proposed powerhouse containing a 1,400-kilowatt generating unit, (4) a proposed draft tube emptying into the canal below the lake, (5) a proposed connection to an overhead transmission line, and (6) appurtenant facilities. The project would have an annual generation of 11.3 gigawatthours that would be sold to PG&E or a power distributor.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item (h) above.

m. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

r. 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.

s. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the applicant specified in the particular application.

t. 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. 01–27197 Filed 10–29–01; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7094–9]

EPA Science Advisory Board Environmental Health Committee Review of the Trichloroethylene (TCE) Health Risk Assessment Synthesis and Characterization Draft Document; Request for Nominations

ACTION: Request for nominations to the Environmental Health Committee (EHC) of the Environmental Protection Agency's (EPA) Science Advisory Board (SAB) for its review of the Agency's draft Trichloroethylene (TCE) Health Risk Assessment.

SUMMARY: The U.S. Environmental Protection Agency Science Advisory Board (SAB) is announcing the formation of a Panel to review the Agency's draft Trichloroethylene (TCE) Health Risk Assessment. The SAB is soliciting nominations to augment the existing EHC to form this Panel. The EPA Science Advisory Board was established to provide independent scientific and technical advice, consultation, and recommendations to the EPA Administrator on the technical bases for EPA regulations. In this sense, the Board functions as a technical peer review panel.

Any interested person or organization may nominate qualified individuals for membership on the panel. Individuals should have expertise in one or more of the following areas: risk assessment and the application of the Agency's risk assessment guidelines; toxicology including carcinogenicity, with a focus on mechanisms of action and pharmacokinetic models; and molecular genetics. Nominees should be identified by name, occupation, position, address and telephone number. To be considered, all nominations must include a current resume providing the nominee's background, experience and qualifications.

Background

EPA's Office of Research and Development (ORD) has completed an external review draft assessing the health risks of trichloroethylene. TCE is a major contaminant of concern in EPA's air, water, and waste programs. This draft was published for public comment on September 19, 2001 at 66 FR 48257–48258. EPA's regulatory program and regional offices have identified TCE as among the highest priorities for a new assessment.

This assessment was also shaped by several new developments in risk assessment. The practice of risk assessment is evolving from a focus on one toxic effect of one pollutant in one environmental medium toward integrated assessments covering multiple effects and multiple media and incorporating information about mode of action, uncertainty, human variation, and cumulative effects of multiple pollutants in different media. This evolution responds to recommendations of the National Research Council, which have been embraced in EPA's proposed cancer guidelines.

This draft assessment takes on the new directions in risk assessment that EPA and others have advocated. The assessment discusses the possibility that children, infants, and the developing fetus may differ from adults with respect to susceptibility to TCE's toxic effects. The assessment addresses cumulative risks by discussing the implications of other chlorinated solvents and agents that have metabolic pathways, potential modes of action, and toxic effects similar to TCE. The assessment implements principles of the proposed cancer guidelines by emphasizing characterization discussions, using mode-of-action information, and identifying susceptible populations.

The issues surrounding TCE are quite complex, with extensive information in some areas and relatively little information in others. The ORD initiated development of 16 peer-reviewed state-of-the-science papers that were published in Environmental Health Perspectives (vol. 108, suppl. 2, May 2000). These papers, which provide the primary scientific support for the assessment, were written by well-recognized scientists carrying out research on TCE or its metabolites.

To accomplish this review, the Science Advisory Board (SAB) will convene a Panel to address the following draft Charge:

(a) Does the assessment adequately discuss the likelihood that trichloroethylene (TCE) acts through multiple metabolites and multiple modes of action?

(b) Is the cancer weight-of-evidence characterization adequately supported?

(c) A new feature of the cancer database is molecular information on the von Hippel-Lindau tumor suppressor gene. Is this information adequately discussed and are the conclusions appropriate?

(d) Does the assessment adequately discuss the use of multiple critical effects in developing an oral reference dose (RfD) and inhalation reference concentration (RfC) for effects other than cancer? Are the uncertainty factors well discussed and well supported?

(e) Does the assessment adequately discuss the derivation of a range of estimates for the cancer risk? Are there any studies that should/should not have been included?

(f) Please comment on the use of calibrated models and uncertainty analysis to address the question of pharmacokinetic model uncertainty.

(g) Is it appropriate to consider background exposures and other characteristics of an exposed population as modulating the risk of TCE exposure in that population?

(h) Do the data support identifying risk factors that may be associated with increased risks from TCE exposure? Are there any risk factors that should/should not have been included?

(i) Do the data support the possibility that TCE can affect children and adults differently? Should this be reflected in the quantitative assessment?

The criteria for selecting Panel members are that these persons be recognized experts in their fields; that they be as impartial and objective as possible; that they represent an array of backgrounds and perspectives (within their disciplines); and that they be available to participate fully in the review, which will be conducted over a relatively short time frame (*i.e.*, within approximately four months). Panel members will be asked to attend at least one public meeting followed by at least one public telephone conference meeting over the course of four months; they will be asked to participate in the discussion of key issues and assumptions at these meetings, and they will be asked to review and to help finalize the products and outputs of the panel. The panel will make recommendations to the Executive Committee (EC) of the SAB for approval of the Board's report and transmittal to the Administrator.

Nominations should be submitted to Mr. Samuel Rondberg, Designated Federal Officer, EPA Science Advisory Board via e-mail to *Rondberg.Sam@epamail.epa.gov* followed by ''hard copy'' via U.S. mail addressed to Mr. Samuel Rondberg, Designated Federal Officer, EPA Science Advisory Board (1400A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, telephone (301) 812–2560, no later than November 9, 2001. The Agency will not formally acknowledge or respond to nominations.

General Information

Additional information concerning the EPA Science Advisory Board, its structure, function, and composition, may be found on the SAB Web site (*http://www.epa.gov/sab*) and in the *Science Advisory Board FY2000 Annual Staff Report* which is available from the SAB Publications Staff at (202) 564–4533 or via fax at (202) 501–0256.

Dated: October 22, 2001.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 01–27285 Filed 10–29–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7094–2]

2002 Resource Conversation and Recovery Act National Meeting

AGENCY: Environmental Protection Agency.

ACTION: Notice of public invitation to Resource Conservation and Recovery Act National Meeting.

SUMMARY: Notice is hereby given of public invitation to the 2002 Resource Conservation and Recovery Act (RCRA) National Meeting, ''Partnerships for Cleaner Communities.'' This meeting, January 15–18, 2002, brings together RCRA program representatives from the Environmental Protection Agency (EPA), States, Tribes and the community. The National Meeting will explore future management issues of hazardous and nonhazardous (industrial, municipal and other) waste. The RCRA National Meeting is a great opportunity to share with, and learn from, each other. It promotes new EPA initiatives and fosters discussion and education concerning Regional, State and tribal issues.

DATES: For the first time, attendance at the National Meeting will be fully open to the general public. The RCRA National Meeting will start at 8:30 a.m. on Tuesday, January 15, 2002 and end at 12 p.m. on Friday, January 18, 2002.

ADDRESSES: The 2002 RCRA National Meeting will be held at the Hyatt Regency Washington on Capitol Hill at 400 New Jersey Avenue, NW., Washington, DC. More information will be made available upon registration.

FOR FURTHER INFORMATION CONTACT: Anita Cummings (703–308–8303), Office of Solid Waste, Mail Code 5303W, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington DC 20460. You may also contact Anita by e-mail at cummings.anita@epa.gov.

SUPPLEMENTARY INFORMATION:

Status

Preregistration is required for meeting attendance. There is no cost to register. No registration will occur at the door. The number of participants will be limited and registrations will be confirmed in the order in which they are received. To reduce costs and save paper, we encourage you to register electronically for the meetings and for overnight accommodations using the meeting Web site: *http://www.epa.gov/osw/meeting/index.htm.* If electronic registration is not possible, please telephone Anita Cummings or Melissa Galyon.

Dated: October 5, 2001.

Elizabeth Cotsworth,

Director, Office of Solid Waste.

[FR Doc. 01–27286 Filed 10–29–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7093–5]

Proposed CERCLA Administrative Order on Consent for Removal Action—Service First Barrel and Drum Site, Salt Lake City, Salt Lake County, Utah

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice and request for public comment.

SUMMARY: In accordance with the requirements of section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9622(h)(1), notice is hereby given of the proposed administrative settlement under section 122(h) of CERCLA, 42 U.S.C. 9622(h), concerning the Service First Barrel and Drum site, between EPA and Redwood Development, LLC (''Settling Party''). The Service First Barrel and Drum Site is located at 1066 South Redwood Road, in Salt Lake City, Salt Lake County, Utah (the ''Site''). The settlement, embodied in the proposed Administrative Order on Consent for Removal Action, EPA Docket No. CERCLA–8–2002–01 (''AOC''), is designed to resolve the Settling Party's liability at the Site through work to be performed and a covenant not to sue for all response costs incurred and to be incurred by EPA in connection with removal activities at the Site.

Redwood Development, LLC is the owner of a parcel of land which was impacted by business operations at Service First Barrel and Drum and is included within the defined boundaries of the Site. The proposed AOC will settle Settling Party's liability under section 107(a)(1) of CERCLA, 42 U.S.C. 9607(a)(1). Under the terms of the proposed AOC, the Settling Party agrees to conduct a cleanup of the contamination on the Settling Party's property. In exchange, the Settling Party will settle its liability for all response costs incurred at the Site in connection with removal activities and will receive contribution protection from other parties associated with the Site.

Opportunity for Comment: For thirty (30) days following the date of publication of this notice, the Agency will consider all comments received on the covenant not to sue portion of the AOC only (section XIII) 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 the EPA Superfund Record Center, 999 18th Street, 5th Floor, in Denver, Colorado.

DATES: Comments must be submitted on or before November 29, 2001.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at the EPA Superfund Records Center, 999 18th Street, 5th Floor, in Denver, Colorado. Comments and requests for a copy of the proposed settlement should be addressed to Carol Pokorny, Enforcement Specialist (8ENF–T), Technical Enforcement Program, U.S. Environmental Protection Agency, 999 18th Street, Suite 300, Denver, Colorado 80202–2466, and should reference the Service First Barrel and Drum Site, Salt Lake City, Utah, and the EPA Docket

No. CERCLA–8–2002–01 (Redwood Development AOC).

FOR FURTHER INFORMATION CONTACT: Carol Pokorny, Enforcement Specialist (8ENF–T), Technical Enforcement Program, U.S. Environmental Protection Agency, 999 18th Street, Suite 300, Denver, Colorado 80202–2466, (303) 312–6970.

Dated: October 12, 2001.

Carol Rushin,

Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice, Region VIII.

[FR Doc. 01–27288 Filed 10–29–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7094–1; CWA–HQ–2001–6022; RCRA–HQ–2001–6022; CAA–HQ–6022]

Clean Water Act Class II: Proposed Administrative Settlement, Penalty Assessment and Opportunity To Comment Regarding Standard Steel, a Division of Freedom Forge Corporation; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On September 27, 2001, EPA published in the **Federal Register**, (66 FR 49379) information concerning a proposed settlement with Standard Steel, a Division of Freedom Forge Corporation (''Standard Steel'') to resolve violations of the Clean Water Act (''CWA''), Resource Conservation and Recovery Act (''RCRA''), Clean Air Act (''CAA''), and their implementing regulations. On October 10, 2001, EPA published additional information concerning this proposed settlement in the **Federal Register**, (66 FR 51667). The purpose of this extension is to offer interested parties the opportunity to comment on all aspects of this consent agreement and proposed final order. This notice extends the public comment period to November 9, 2001.

DATES: Comments are due on or before November 9, 2001.

ADDRESSES: Mail written comments to the Enforcement & Compliance Docket and Information Center (2201A), Docket Number EC–2001–006, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Mail Code 2201A, Washington, DC 20460. (Comments may be submitted on disk in WordPerfect 8.0 or earlier versions.) Written comments may be delivered in person to: Enforcement and Compliance Docket Information Center, U.S. Environmental Protection Agency, Rm. 4033, Ariel Rios Bldg., 1200 Pennsylvania Avenue, NW, Washington, DC. Submit comments electronically to *docket.oeca@epa.gov.* Electronic comments may be filed online at many Federal Depository Libraries.

The consent agreement, the proposed final order, and public comments, if any, may be reviewed at the Enforcement and Compliance Docket Information Center, U.S. Environmental Protection Agency, Rm. 4033, Ariel Rios Bldg., 1200 Pennsylvania Avenue, NW, Washington, DC. Persons interested in reviewing these materials must make arrangements in advance by calling the docket clerk at 202–564–2614. A reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Beth Cavalier, Multimedia Enforcement Division (2248–A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone (202) 564–3271; fax: (202) 564–9001; e-mail: *cavalier.beth@epa.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Copies

Electronic copies of this document are available from the EPA homepage under the link ''Laws and Regulations'' at the **Federal Register**—Environmental Documents entry (*http://www.epa.gov/fedrgstr*).

Dated: October 23, 2001.

David A. Nielsen,

Director, Multimedia Enforcement Division, Office of Enforcement and Compliance Assurance.

[FR Doc. 01–27287 Filed 10–29–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

October 23, 2001.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before December 31, 2001. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, 445 12th Street, SW., Room 1–A804, Washington, DC 20554 or via the Internet to *lesmith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at *lesmith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0856.

Title: Universal Service—Schools and Libraries Universal Service Program Reimbursement Forms.

Form No.: FCC Forms 472, 473 and 474.

Type of Review: Extension.

Respondents: Business or Other for Profit; Not for Profit Institutions.

Number of Respondents: 61,800.

Estimated Time Per Response: 1.42 hours per response (avg).

Total Annual Burden: 88,050 hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion, Annually, Third Party Disclosure.

Needs and Uses: The Telecommunications Act of 1996 contemplates that discounts on eligible services shall be provided to schools and libraries, and that service providers shall seek reimbursement for the amount of the discounts. FCC Form 472, Billed Entity Applicant Reimbursement Form. The information collected in FCC Form 472 is necessary to enable the

fund administrator to pay universal service support to service providers who provide discounted services to eligible schools, libraries, and consortia of those entities. The information collected on the FCC Form 472 is be completed by an applicant to seek reimbursement for payments on approved services and/or products delivered to the applicant from the actual service start date. This information is necessary to identify the amount of the discounts due and owing from the service provider to the applicant, so that the service provider may reimburse this amount to the applicant. FCC Form 473, Service Provider Annual Certification Form. FCC Form 473 is submitted by each service provider or vendor that was assigned a service provider identification number (SPIN) and that participates in the universal service support mechanism for schools and libraries. The purpose of the form is to confirm that, for each Service Provider Invoice Form submitted by the service provider, the Form is in compliance with the FCC's rules governing the schools and libraries universal service support mechanism, and that the Form is true, accurate and complete. FCC Form 474, Service Provider Invoice Form. The Service Provider Invoice Form is to be used by all service providers or vendors who are assigned a SPIN and participate in the universal service support mechanism for schools and libraries. The purpose of FCC Form 474 is for the service provider/vendor to seek reimbursement for the cost of discounts. FCC Form 474 must be received before a service provider participating in the universal service program for schools and libraries can receive payment for the discounted portion of its bill for eligible services to eligible entities.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 01–27226 Filed 10–29–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–01–31–D (Auction No. 31); DA 01–2394]

Auction of Licenses for 747–762 and 777–792 MHz Bands (Auction No. 31) Scheduled for June 19, 2002

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces that Auction No. 31 is scheduled for June 19, 2002 and provides important dates and deadlines for pre-auction events.

DATES: Auction No. 31 is scheduled for June 19, 2002.

FOR FURTHER INFORMATION CONTACT: Craig Bomberger, Auctions Operations Branch; Howard Davenport, Legal Branch at (202) 418–0660; or Lisa Stover, Auctions Operations Branch at (717) 338–2888.

SUPPLEMENTARY INFORMATION: This is a summary of a Public Notice released October 15, 2001. The complete text of the Public Notice 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. The Public Notice 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.*

By the Public Notice, the Wireless Telecommunications Bureau announces that the auction of licenses for 747–762 and 777–792 MHz bands (Auction No. 31) is scheduled to begin June 19, 2002. The dates and deadlines for important pre-auction events are provided.

Pre-Auction Seminar: April 30, 2002
Short-Form Application (FCC Form 175) Filing Window Opens: April 30, 2002
Short-Form Application (FCC Form 175) Deadline: May 8, 2002
Upfront Payments Deadline: May 28, 2002
Mock Auction: June 14, 2002
Auction Start Date: June 19, 2002

Federal Communications Commission.

Margaret Wiener,

Chief, Auctions and Industry Analysis Division, WTB.

[FR Doc. 01–27228 Filed 10–29–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 01–2405]

Public Safety National Coordination Committee

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document advises interested persons of a meeting of the Public Safety National Coordination Committee (''NCC''), which will be held in Brooklyn, NY. The Federal Advisory Committee Act, Public Law 92–463, as amended, requires public notice of all meetings of the NCC. This notice advises interested persons of the fourteenth meeting of the Public Safety National Coordination Committee.

DATES: November 16, 2001 at 9:30 a.m.–3:30 p.m.

ADDRESSES: New York Marriott Brooklyn, 333 Adams Street, Brooklyn, NY 11201.

FOR FURTHER INFORMATION CONTACT: Designated Federal Officer, Michael J. Wilhelm, (202) 418–0680, e-mail *mwilhelm@fcc.gov.* Press Contact, Meribeth McCarrick, Wireless Telecommunications Bureau, 202–418–0600, or e-mail *mmccarri@fcc.gov.*

SUPPLEMENTARY INFORMATION: Following is the complete text of the Public Notice: This Public Notice advises interested persons of the fourteenth meeting of the Public Safety National Coordination Committee (''NCC''), which will be held in Brooklyn, NY. The Federal Advisory Committee Act, Public Law 92–463, as amended, requires public notice of all meetings of the NCC.

Date: November 16, 2001.

Meeting Time: General Membership Meeting—9:30 a.m.–3:30 p.m.

Address: New York Marriott Brooklyn, 333 Adams Street, Brooklyn, NY 11201.

The NCC Subcommittees will meet from 9:00 a.m. to 5:30 p.m. the previous day. The NCC General Membership Meeting will commence at 9:30 a.m. and continue until 3:30 p.m. The agenda for the NCC membership meeting is as follows:

1. Introduction and Welcoming Remarks.
2. Presentation by New York Public Safety Representatives on Interoperability Factors Affecting the Response to the World Trade Center Incident.
3. Presentation by Steve Souder, Arlington County, Virginia, Emergency Communications Center on Interoperability Factors Affecting the Response to the Pentagon Incident.
4. Presentation by John Oblak of the Telecommunications Industries Association on 700 MHz Wideband Data Transmission Standards.
5. Presentation by John Bynum, Pinellas County, Florida, on the ''Greenhouse'' mobile data transmission system.
6. Presentation by a Public Safety Wireless Network representative on a recommended Incident Response System.
7. Public participation.

8. Selection of sites and dates for upcoming NCC meetings.

9. Other Business.

10. Adjournment.

The FCC has established the Public Safety National Coordination Committee, pursuant to the provisions of the Federal Advisory Committee Act, to advise the Commission on a variety of issues relating to the use of the 24 MHz of spectrum in the 764–776/794–806 MHz frequency bands (collectively, the 700 MHz band) that has been allocated to public safety services. *See* The Development of Operational, Technical and Spectrum Requirements For Meeting Federal, State and Local Public Safety Agency Communications Requirements Through the Year 2010 and Establishment of Rules and Requirements For Priority Access Service, WT Docket No. 96–86, First Report and Order and Third Notice of Proposed Rulemaking, FCC 98–191, 14 FCC Rcd 152 (1998), 63 FR 58645 (11–2–98).

The NCC has an open membership. Previous expressions of interest in membership have been received in response to several Public Notices inviting interested persons to become members and to participate in the NCC's processes. All persons who have previously identified themselves or have been designated as a representative of an organization are deemed members and are invited to attend. All other interested parties are hereby invited to attend and to participate in the NCC processes and its meetings and to become members of the Committee. This policy will ensure balanced participation. Members of the general public may attend the meeting. To attend the fourteenth meeting of the Public Safety National Coordination Committee, please RSVP to Joy Alford of the Policy and Rules Branch of the Public Safety and Private Wireless Division, Wireless Telecommunications Bureau of the FCC by calling (202) 418–0680, by faxing (202) 418–2643, or by e-mailing at *jalford@fcc.gov.* Please provide your name, the organization you represent, your phone number, fax number and e-mail address. This RSVP is for the purpose of determining the number of people who will attend this fourteenth meeting. The FCC will attempt to accommodate as many people as possible. However, admittance will be limited to the seating available. Persons requesting accommodations for hearing disabilities should contact Joy Alford immediately at (202) 418–7233 (TTY). Persons requesting accommodations for other physical disabilities should contact Joy Alford immediately at (202) 418–0694 or via e-mail at *jalford@fcc.gov.* The public may submit written comments to the NCC's Designated Federal Officer before the meeting.

Additional information about the NCC and NCC-related matters can be found on the NCC Web site located at: *http://www.fcc.gov/wtb/publicsafety/ncc.html.*

Federal Communications Commission.

Jeanne Kowalski,

Deputy Division Chief for Public Safety, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau.

[FR Doc. 01–27227 Filed 10–29–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 12 p.m., Monday, November 5, 2001.

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 26, 2001.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 01–27360 Filed 10–26–01;12:21 pm]

BILLING CODE 6210–01–M

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0235]

Submission for OMB Review; Comment Request Entitled Price Reductions Clause

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance 3090–0235, Price Reductions Clause.

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 currently approved information collection requirement concerning Price Reductions Clause.

DATES: Comment Due Date: December 31, 2001.

ADDRESSES: Comments regarding this collection of information 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 GSA Acquisition Policy (202) 208–6750.

SUPPLEMENTARY INFORMATION:

A. Purpose

The GSA is requesting the Office of Management and Budget (OMB) to review and approve information collection, 3090–0235, The Price Reductions Clause. The Price Reductions Clause used in multiple award schedule contracts ensures that the Government maintains its relationship with the contractor's customer or category of customers, upon which the contract is predicated.

B. Annual Reporting Burden

Number of Respondents: 9,547.

Total Annual Responses: 19,094.

Percentage of these responses collected electronically: 100.

Average hours per response: 7.5 hours.

Total Burden Hours: 143,205.

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) 501–4744. Please cite OMB Control No. 3090–0235, Price Reductions Clause.

Dated: October 22, 2001.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 01–27305 Filed 10–29–01; 8:45 am]

BILLING CODE 6220–61–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Submission for OMB Review; Comment Request

The Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and 5 CFR 1320.5. The following are those information collections recently submitted to OMB.

1. National Study of Culturally and Linguistically Appropriate Services in Managed Care Organizations—NEW—The Office of Minority Health proposes to conduct a survey of a random sample of managed care organizations. The survey will provide data on the prevalence of policies and practices that promote the delivery of culturally and linguistically appropriate services, and identify factors that may facilitate or impede the implementation of such policies and practices. The information will inform the Office of Minority Health in the development of technical assistance materials. *Respondents:* Business or other for-profit, Non-profit organizations; *Number of Respondents:* 720; *Frequency of Response:* one time; *Burden per Response:* .42 hours; *Total Burden:* 300 hours.

OMB Desk Officer: Allison Herron Eydt.

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 690–6207. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address: Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503.

Comments may also be sent to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue SW., Washington DC 20201. Written comments should be received within 30 days of this notice.

Dated: October 22, 2001.

Kerry Weems,

Acting Deputy Assistant Secretary, Budget.

[FR Doc. 01–27309 Filed 10–29–01; 8:45 am]

BILLING CODE 4150–29–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Breast and Cervical Cancer Early Detection and Control Advisory Committee Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. Law. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Breast and Cervical Cancer Early Detection and Control Advisory Committee.

Times and Dates: 1 p.m.–5 p.m., November 14, 2001; 9 a.m.–5 p.m., November 15, 2001.

Place: The Doubletree Club Hotel—Atlanta Airport, 3400 Norman Berry Road, Atlanta, Georgia 30344, Telephone: (404) 763–1600.

Status: Open to the public limited only by the space available.

Purpose: This committee is charged with providing advice and guidance to the Secretary, and the Director of CDC, regarding the need for early detection and control of breast and cervical cancer and to evaluate the Department's current breast and cervical cancer early detection and control activities.

Matters to be Discussed: The discussion will primarily focus on evaluating the CDC National Breast and Cervical Cancer Early Detection Program.

Members of the public who wish to make a brief oral presentation at the meeting should contact Ms. Cecilia Nkabinde at 770–488–4880 or Ms. Regina Seider at (770) 488–3078 by 4 p.m. on November 1, 2001 to have time reserved on the agenda. Each individual or group making an oral presentation will be limited to 5 minutes. The request should identify the name of the individual who will make the presentation and an outline of the issues to be addressed. At least 25 copies of the presentation and 25 copies of the visual aids used at the meeting are to be given to Ms. Nkabinde no later than the time of the presentation for distribution to the Committee and the interested public.

Contact Person for Additional Information: Ms. Cecilia Nkabinde, Division of Cancer Prevention and Control, National Center for Chronic Disease Prevention and Health Promotion, CDC, 4770 Buford Highway, NE., M/S K–57, Atlanta, Georgia 30341–3724, telephone 770/488–4880.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: October 24, 2001.

John Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 01–27212 Filed 10–29–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01C–0486]

LycoRed Natural Products Industries; Filing of Color Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that LycoRed Natural Products Industries has filed a petition proposing that the color additive regulations be amended to provide for the safe use of tomato lycopene extract to color foods generally.

FOR FURTHER INFORMATION CONTACT: Aydin Örstan, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3076.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 721(d)(1) (21 U.S.C. 379e(d)(1))), notice is given that a color additive petition (CAP 1C0273) has been filed by LycoRed Natural Products Industries, c/o TC Associates, Inc., P.O. Box 285, West Boxford, MA 01885. The petition proposes to amend the color additive regulations in 21 CFR part 73 to provide for the safe use of tomato lycopene extract to color foods generally.

The agency has determined under 21 CFR 25.32(k) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: October 17, 2001.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 01–27252 Filed 10–29–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4655–N–23]

Notice of Proposed Information Collection: Comment Request; Mortgagor's Certificate of Actual Cost

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be 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: December 31, 2001.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Building, Room 8202, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Michael McCullough, Director, Office of Multifamily Development, U.S. Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone number (202) 708–2866 (this is not a toll-free number), for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection 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 agency's estimate of the burden of the proposed collection of information; (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 the use appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Mortgagor's Certificate of Actual Cost.

OMB Control Number, if applicable: 2502–0112.

Description of the need for the information and proposed use: HUD Form–92330 is used to obtain data from the mortgagor relative to the actual cost of the project. The mortgagor is required by law to create and maintain records necessary to audit project costs at final endorsement. The actual data is reviewed by HUD staff to determine that the mortgagor's originally endorsed mortgage is supported by the applicable percentage of approved costs. Failure to receive and review the cost certification data would result in the Department's over insurance of the mortgage in violation of the law.

Agency form numbers, if applicable: HUD–92330.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: An estimation of the total number of hours needed to prepare the information collection is 4,000. The number of respondents is 500. The number of hours per response is 8. The form is submitted only once during the final endorsement period of the mortgage.

Status of the proposed information collection: Reinstatement, without change, of previously approved collection for which approval has expired.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: October 12, 2001.

Sean Cassidy,

General Deputy Assistant Secretary for Housing, Federal Housing Commissioner.

[FR Doc. 01–27315 Filed 10–29–01; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4513–N–07]

Credit Watch Termination Initiative

AGENCY: Office of Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice advises of the cause and effect of termination of Origination Approval Agreements taken by HUD's Federal Housing Administration against HUD-approved mortgagees through its Credit Watch Termination Initiative. This notice includes a list of mortgagees which have had their Origination Approval Agreements (Agreements) terminated.

FOR FURTHER INFORMATION CONTACT: The Quality Assurance Division, Office of Housing, Department of Housing and Urban Development, 451 Seventh St. SW., Room B133–P3214, Washington, DC 20410; telephone (202) 708–2830 (this is not a toll free number). Persons with hearing or speech impairments may access that number via TTY by calling the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: HUD has the authority to address deficiencies in the performance of lenders' loans as provided in the HUD mortgagee approval regulations at 24 CFR 202.3. On May 17, 1999 (64 FR 26769), HUD published a notice on its procedures for terminating Origination Approval Agreements with FHA lenders and placement of FHA lenders on Credit Watch status (an evaluation period). In the May 17, 1999 notice, HUD advised that it would publish in the **Federal Register** a list of mortgagees which have had their Origination Approval Agreements terminated.

Termination of Origination Approval Agreement

Approval of a mortgagee by HUD/FHA to participate in FHA mortgage insurance programs includes an Agreement between HUD and the mortgagee. Under the Agreement, the mortgagee is authorized to originate single family mortgage loans and submit them to FHA for insurance endorsement. The Agreement may be terminated on the basis of poor performance of FHA-insured mortgage loans originated by the mortgagee. The termination of a mortgagee's Agreement is separate and apart from any action taken by HUD's Mortgagee Review Board under HUD's regulations at 24 CFR part 25.

Cause

HUD's regulations permit HUD to terminate the Agreement with any mortgagee having a default and claim rate for loans endorsed within the preceding 24 months that exceeds 200 percent of the default and claim rate within the geographic area served by a HUD field office, and also exceeds the national default and claim rate. For the seventh review period, HUD is only terminating the Agreement of mortgagees whose default and claim rate exceeds both the national rate and 300 percent of the field office rate.

Effect

Termination of the Agreement precludes that branch(s) of the mortgagee from originating FHA-insured single family mortgages within the area of the HUD field office(s) listed in this notice. Mortgagees authorized to purchase, hold, or service FHA insured mortgages may continue to do so.

Loans that closed or were approved before the Termination became effective may be submitted for insurance endorsement. Approved loans are (1) those already underwritten and approved by a Direct Endorsement (DE) underwriter employed by an unconditionally approved DE lender and (2) cases covered by a firm commitment issued by HUD. Cases at earlier stages of processing cannot be submitted for insurance by the terminated branch; however, they may be transferred for completion of processing and underwriting to another mortgagee or branch authorized to originate FHA insured mortgages in that area. Mortgagees are obligated to continue to pay existing insurance premiums and meet all other obligations associated with insured mortgages.

A terminated mortgagee may apply for a new Origination Approval Agreement if the mortgagee continues to be an approved mortgagee meeting the requirements of 24 CFR 202.5, 202.6, 202.7, 202.8 or 202.10 and 202.12, if there has been no Origination Approval Agreement for at least six months, and if the Secretary determines that the underlying causes for termination have been remedied. To enable the Secretary to ascertain whether the underlying causes for termination have been remedied, a mortgagee applying for a new Origination Approval Agreement must obtain an independent review of the terminated office's operations as well as its mortgage production, specifically including the FHA-insured mortgages cited in its termination notice. This independent analysis shall identify the underlying cause for the mortgagee's high default and claim rate. The review must be conducted and issued by an independent Certified Public Accountant (CPA) qualified to perform audits under Government Auditing Standards as set forth by the General Accounting Office. The mortgagee must also submit a written corrective action plan to address each of the issues identified in the CPA's report, along with evidence that the plan has been implemented. The application for a new Agreement should be in the form of a letter, accompanied by the CPA's report and corrective action plan. The request should be sent to the Director, Office of Lender Activities and Program Compliance, 451 Seventh Street, SW., Room B133–P3214, Washington, DC 20410 or by courier to 490 L'Enfant Plaza, East, SW., Suite 3214, Washington, DC 20024.

Action

The following mortgagees have had their Agreements terminated by HUD:

Mortgagee name	Mortgagee branch address	HUD Office jurisdictions	Terminataion effective date	Home ownership centers
American Charter Mortgage	8141 E 2nd Street Suite 206 Downey CA 90241	Los Angeles, CA	07/17/2001	Santa Anna.
American Financial MTG Corp	1011 Noteware Drive Traverse City, MI 49686	Grand Rapids, MI.	07/17/2001	Philadelphia.
Bankers First Mortgage Co	9505 Reisterstown Rd Suite 100S Owings Mills, MD 21117.	Baltimore, MD	04/28/2001	Philadelphia.
Capital State Mortgage	2646 Southloop West Suite 110 Houston, TX 77054.	Houston, TX	05/24/2001	Denver.
First Guaranty Mortgage Corp	8180 Greensboro Dr Suite 1175 Mclean, VA 22102	Washington, DC	04/28/2001	Philadelphia.
Mortgage Edge Corporation	3475 Sheridan St Suite 301 Hollywood, FL 33031	Florida State Off, FL.	07/17/2001	Atlanta.
Mortgage Edge Corporation	150 Westpark Way #304 Euless, TX 76040	Fort Worth, TX	07/17/2001	Denver.
North Star Mortgage	416 Ponce De Leon Avenue #6 Hato Rey, PR 00918.	San Juan, PR	07/17/2001	Atlanta

Dated: October 22, 2001.

John C. Weicher,

Assistant Secretary for Housing, Federal Housing Commissioner.

[FR Doc. 01–27313 Filed 10–29–01; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability, Draft Restoration Plan and Environmental Assessment

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish & Wildlife Service (Service), on behalf of the U.S. Department of the Interior (DOI), as a Natural Resource Trustee (Trustee), announces the release for public review of the Draft Restoration Plan and Environmental Assessment (RP/EA) for the Charles George Landfill Superfund Site in Tyngsborough, Massachusetts. The Draft RP/EA describes the DOI's proposal to restore natural resources injured as a result of chemical contamination at the Charles George Landfill Superfund Site.

DATES: Written comments must be submitted on or before December 14, 2001.

ADDRESSES: Requests for copies of the Draft RP/EA may be made to: Laura Eaton-Poole, U.S. Fish and Wildlife Service, New England Field Office c/o Great Meadows National Wildlife Refuge, Weir Hill Road, Sudbury, Massachusetts, 01776. Copies are also available on the internet at: *http://greatmeadows.fws.gov/charlesgeorge.html.*

Written comments or materials regarding the Draft RP/EA should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Laura Eaton-Poole, U.S. Fish and Wildlife Service, New England Field Office c/o Great Meadows National Wildlife Refuge, Weir Hill Road, Sudbury, Massachusetts, 01776. Interested parties may also call 978–443–4661, extension 17, or send email to *Laura_Eaton@fws.gov* for further information.

SUPPLEMENTARY INFORMATION: Under the authority of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980 as amended, commonly known as Superfund, (42 U.S.C. 9601 *et seq.*), ''* * * (Trustees) may assess damages to natural resources resulting from a discharge of oil or a release of a hazardous substance * * *

and may seek to recover those damages.'' Natural resource damage assessments are separate from the cleanup actions undertaken at a hazardous waste site, and provide a process whereby the Trustees can determine the proper compensation to the public for injury to natural resources.

Three natural resource trustees settled with the Potentially Responsible Parties for injuries to natural resources due to releases of hazardous substances from the Charles George Landfill Superfund Site: DOI recovered $299,916 for injuries to migratory birds that use wetlands; the National Oceanic and Atmospheric Administration recovered $134,624 for potential injuries to anadromous and catadromous fish in the Merrimack River; and the Commonwealth of Massachusetts recovered $918,900 for injuries to wetlands and groundwater. The total recovery of damages and future oversight expenses for all the Trustees was $1,353,440. The three Trustees signed a Memorandum of Agreement (MOA) in recognition of the common interests to restore, replace and/or acquire the equivalent natural resources which were injured, destroyed, or lost by the releases of hazardous substances. The MOA provides a framework for the development of a Trustee Council that cooperatively develops and implements a Restoration Plan.

The Draft RP/EA is being released in accordance with section 111(i) of CERCLA, 42 U.S.C. 9611(i) and the National Environmental Policy Act. The Draft RP/EA describes a number of natural resource restoration, acquisition, and protection alternatives identified by the Charles George Natural Resources Trustee Council (Trustee Council), and evaluates each of the possible alternatives based on all relevant considerations. The Trustee Council's Preferred Alternative has two parts: (1) The settlement funds will be used to protect properties adjacent to or near the areas of impact and; (2) the settlement funds will be used to contribute to the anadromous fish restoration effort in the Merrimack River Watershed through the funding of stocking and monitoring of alewife in the Concord River in Massachusetts, and contributing to the funding of the construction of a fish ladder at a dam on the Concord River which is an impediment to upstream migration of migratory fish. Details regarding the proposed projects are contained in the Draft RP/EA.

Interested members of the public are invited to review and comment on the Draft RP/EA. Copies of the Draft RP/EA are available from the Service's New England Field Office c/o Great Meadows National Wildlife Refuge, Weir Hill Road, Sudbury, Massachusetts, 01776, or from the Tyngsborough Public Library, 25 Bryants Lane, Tyngsborough, Massachusetts, 01879. All comments received on the Draft RP/EA will be considered and a response provided either through revision of the Draft RP/EA and incorporation into the Final Restoration Plan and Environmental Assessment, or by letter to the commentor.

Author: The primary author of this notice is Laura Eaton-Poole, U.S. Fish and Wildlife Service, New England Field Office, c/o Great Meadows National Wildlife Refuge, Weir Hill Road, Sudbury, Massachusetts, 01776.

Authority: The authority for this action is the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980 as amended, commonly known as Superfund, (42 U.S.C. 9601 *et seq.*).

Dated: October 10, 2001.

Joseph J. Dowhan,

Acting Regional Director, Region 5, U.S. Fish & Wildlife Service.

[FR Doc. 01–26988 Filed 10–29–01; 8:45 am]

BILLING CODE 4310–55–P]

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Candidate Conservation Agreement with Assurances and Permit Application for a Proposed Reintroduction of the Robust Redhorse

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The Fish and Wildlife Service has received an application from Georgia Power Company (Applicant) for an enhancement of survival permit (ESP) pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973 (U.S.C. 1531 *et seq.*), as amended (Act). With the assistance of the Georgia Department of Natural Resources (GDNR) and the Service, Georgia Power Company proposes to reintroduce the robust redhorse (*Moxostoma robustum*) into a portion of the upper Ocmulgee River in central Georgia and conduct related research and monitoring activities. We are announcing our receipt of the permit application as well as the availability of a proposed Candidate Conservation Agreement with Assurances (CCAA) for the robust redhorse that is intended to facilitate the implementation of conservation measures for the species by the Applicant, GDNR, and the Service in support of on-going efforts to reintroduce the species into areas where it historically occurred.

DATES: Written comments on the CCAA and ESP application should be sent to the Service's Regional Office (see **ADDRESSES**) and should be received on or before November 29, 2001.

ADDRESSES: Persons wishing to review the CCAA and ESP application may obtain copies by writing the Service's Southeast Regional Office, Atlanta, Georgia. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits), or Field Supervisor, U.S. Fish and Wildlife Service, 247 South Milledge Avenue, Athens, Georgia 30605. Written data or comments concerning the CCAA or ESP application should be submitted to the Regional Office at the address listed above and must be submitted in writing to be adequately considered in the Service's decision-making process. Please reference permit number TE038547–0 in your comments, or in requests of the documents discussed herein.

FOR FURTHER INFORMATION CONTACT: Mr. Lee Andrews, Regional CCAA Coordinator, (see **ADDRESSES** above), telephone: 404/679–7217, facsimile: 404/679–7081; or Mr. Mark Bowers, Fish and Wildlife Biologist, Georgia Field Office, Athens, Georgia (see **ADDRESSES** above), telephone: 706/613–9493.

SUPPLEMENTARY INFORMATION: The robust redhorse is a large, rare sucker that was originally described from the Yadkin River, North Carolina, in 1869 by Edward Cope. Few specimens were collected and the species' status was uncertain until 1991 when a single population of robust redhorse was discovered by GDNR biologists along a 70-mile reach of the Oconee River in central Georgia. The robust redhorse is the largest North American sucker species and historically occurred in medium to large rivers of the South Atlantic Coastal Plain where it spawned on clean, rocky shoals. It is listed by the State of Georgia as endangered and is considered a species of management concern by the Service.

Since the rediscovery of the species, a number of management and conservation efforts for the robust redhorse have been implemented by the Robust Redhorse Conservation Committee (RRCC), which was established in 1995 through a

Memorandum of Understanding among State and Federal agencies, private interests, research scientists, industry, and conservation organizations. The RRCC works voluntarily and cooperatively to determine the status of known robust redhorse populations, establish additional populations, and implement necessary research and other actions to maintain or enhance the survival of this species within its historic range. The Applicant, GDNR, and the Service are each members of the RRCC.

The RRCC has made significant conservation advances relative to the robust redhorse since 1995, including the development of propagation techniques, progress in the understanding of the species' life history and habitat requirements, and the discovery of three additional natural populations. In addition, three refugial populations have been established based on techniques developed through this cooperative effort. The RRCC has also secured funding necessary to continue and expand collaborative conservation efforts and research for the robust redhorse.

The RRCC has also developed a Conservation Strategy for the robust redhorse that includes short- and long-term goals for the conservation of the species. The short-term goals of the Conservation Strategy include, but are not limited to: (1) Establishing refugial populations to reduce the impact of potential catastrophic events on the species' survival; (2) Determining habitat and life history requirements of robust redhorse; and (3) Establishing reintroduction plans or agreements to facilitate conservation actions for specific sites. The long-term goal of the Conservation Strategy is to establish or maintain at least six self-sustaining populations of robust redhorse distributed throughout the species' historic range. These conservation goals are based on the recommendations of the RRCC, fishery biologists, research scientists, and State and Federal resource agencies, and are based on research reviewed by members of the RRCC. The activities covered by the proposed CCAA complement the efforts of the RRCC and support the RRCC's goals of establishing refugial and self-sustaining populations throughout the species' historic range.

CCAAs encourage private and other non-Federal property owners to implement conservation efforts and reduce threats to unlisted but declining species by assuring those landowners that they will not be subjected to increased land and water use restrictions if a species covered by a CCAA is listed in the future. By focusing on species which are not currently listed under the Act, including species proposed for listing, species which are formal candidates for listing, and species which may become proposed or candidate species in the future, CCAAs provide the opportunity to conserve declining species prior to or instead of listing. The robust redhorse is considered to be a species of management concern, and, as such, could become a proposed or candidate species in the future. Efforts such as those proposed in conjunction with the proposed CCAA will expedite reintroduction of robust redhorse into the Ocmulgee River by providing the Applicant with a regulatory incentive for participation that would not likely exist except for this CCAA. In this way, the proposed CCAA will address both the needs of the species and those of the Applicant.

The proposed CCAA represents a significant milestone in the cooperative conservation efforts for the species and is consistent with section 2(a)(5) of the Act, which encourages creative partnerships among public, private, and government entities to conserve imperiled species and their habitats. Consistent with our CCAA policy, the proposed CCAA is intended to facilitate conservation actions for robust redhorse that will remove or reduce the threats to the species. The CCAA is also intended to provide the Applicant with regulatory certainty related to its electric power generation operations at Lloyd Shoals Dam, which controls flows within that portion of the Ocmulgee River where the conservation actions will occur, should the robust redhorse become federally listed as threatened or endangered in the future.

The conservation measures in the CCAA would be implemented by the Applicant, with the assistance of GDNR and the Service, and would consist of reintroducing robust redhorse into a portion of the upper Ocmulgee River in central Georgia, monitoring the effectiveness of reintroduction efforts, conducting research on critical life history and habitat requirements for the species within the project area, and working collaboratively to identify and protect important robust redhorse habitats within the project area through existing laws and regulations. These objectives support the Conservation Strategy for the species developed by the RRCC.

The Applicant has committed to implement the conservation measures specified in the CCAA and requests issuance of the ESP in order to address the take prohibitions of section 9 of the Act should the species become listed in the future. When determining whether to issue the requested ESP, the Service will consider a number of factors and information sources including the project's administrative record, any public comments received, and the application requirements and issuance criteria for CCAAs contained in 50 CFR part 17.22(d) and part 17.32(d). The Service will also evaluate whether the issuance of the ESP complies with section 7 of the Act by conducting an intra-Service section 7 consultation. The results of this consultation, in combination with the above findings, regulations, and public comments, will be used in the final analysis to determine whether or not to issue the requested ESP.

In a CCAA, we will provide that if any species covered by the CCAA is listed, and the CCAA has been implemented in good faith by the Applicant, we will not require additional conservation measures nor impose additional land, water, or resource use restrictions beyond those the property owner voluntarily committed to under the terms of the CCAA. We have made the preliminary determination that the Applicant's conservation measures will likely meet the intent of the CCAA policy, primarily due to the potential establishment of another self-sustaining population of the species within its historic range. The proposed CCAA would be in effect for a period of 22 years in that portion of the Ocmulgee River lying downstream of Lloyd Shoals Dam (river mile 250.2) and upstream of a low-head dam at Juliette, Georgia (river mile 230.9). Habitat conditions within this portion of the Ocmulgee River have been evaluated by the Applicant, GDNR, and the Service and are believed to be suitable for the robust redhorse such that there is a high likelihood that a refugial or reproducing population will become established.

We are providing this notice pursuant to section 10(c) of the Endangered Species Act and implementing regulations for the National Environmental Policy Act (40 CFR part 1506). We will not make our final determination until after the end of the 30-day comment period and will fully consider all comments received during the comment period. If the final analysis shows the CCAA to be consistent with the Service's policies and applicable regulations, the Service will sign the CCAA and issue the ESP. The proposed ESP would, in compliance with the CCAA policy, only become valid on such date as the robust redhorse is listed as a threatened or endangered species under the Act.

This notice also advises the public that the Service has made a preliminary determination that issuance of the ESP will not result in significant environmental, economic, social, historical or cultural impacts and is, therefore, categorically excluded from review under the National Environmental Policy Act of 1969, as amended (NEPA), pursuant to 516 Departmental Manual 2, Appendix 1 and 516 Departmental Manual 6, Appendix 1. This notice is provided pursuant to section 10 of the Act and our CCAA Policy (**Federal Register** Vol. 64, No. 116, June 17, 1999, pp. 32726–32736). The Service specifically requests information, views, and opinions from the public via this notice. Further, the Service is specifically soliciting information regarding the adequacy of the CCAA as measured against the Service's CCAA Policy.

Dated: October 22, 2001.

H. Dale Hall,

Acting Regional Director.

[FR Doc. 01–27213 Filed 10–29–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Preparation of an Environmental Assessment for Shell Offshore Inc.'s Proposed Deepwater Development Plan Offshore Alabama (NaKika 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 115–118 miles offshore Alabama in Mississippi Canyon Blocks 474 and 520.

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. Clay Pilie', telephone (504) 736–2443.

SUPPLEMENTARY INFORMATION: The MMS GOM Region received an Initial Development Operations Coordination Document (DOCD) from Shell Offshore Inc. (Shell) that proposes to develop and produce hydrocarbon reserves using facilities located in Mississippi Canyon Blocks 474 and 520. The DOCD was assigned a plan control number of N–7166 and the project is referred to as the NaKika Project. Shell proposes to complete the previously drilled Mississippi Canyon Block 520 No. 1 Well (Herschel) and install the centrally-located floating semisubmersible-shaped host facility (NaKika) in Mississippi Canyon Block 474. The NaKika host facility will support the facilities, equipment, flowline risers, and export pipelines necessary to develop the reserves from 10 satellite subsea wells located in five independent fields—Kepler (Mississippi Canyon Block 383), Ariel (Mississippi Canyon 429 Unit), Fourier (Mississippi Canyon 522 Unit), Herschel (Mississippi Canyon 522 Unit), and East Anstey (Mississippi Canyon 607 Unit).

The NaKika host facility will be permanently moored by a 16-point, semi-taut wire rope, chain, and suction pile mooring system. The hull portion of the NaKika host facility is comprised of four square steel columns, 56 feet wide and 142 feet high, and four rectangular steel pontoons, 41 feet wide and 35 feet high, which connect the bottoms of the four columns. Topside facilities are comprised of four modules—quarters, process, east receiving, and west receiving. The quarters module will house up to 60 people.

The water depth at the NaKika host facility is approximately 6,340 feet. The project will use existing onshore support bases in Venice (air transportation) and Port Fourchon (marine transportation), Louisiana, to support the proposed activities.

Oil and gas produced at the NaKika project will be transported 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 Shell. 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 the 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: October 9, 2001.

Chris C. Oynes,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 01–27253 Filed 10–29–01; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR DEPARTMENT OF TRANSPORTATION

National Park Service

Federal Aviation Administration

Membership in the National Parks Overflights Advisory Group

AGENCY: National Park Service, Interior, and Federal Aviation Administration, Transportation.

ACTION: Notice.

SUMMARY: The National Park Service (NPS) and Federal Aviation Administration (FAA) in accordance with the National Parks Air Tour Management Act of 2000; established the National Parks Overflights Advisory Group (NPOAG). The NPOAG was formed to provide continuing advice and counsel with respect to commercial air tour operations over and near national parks. This notice informs the public of the addition of three new members to the NPOAG.

FOR FURTHER INFORMATION CONTACT: Howard Nesbitt, Flight Standards Service, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591, telephone: (202) 493–4981, or Marvin Jensen, Soundscapes Office, National Park Service, 1201 Oak Ridge Drive, Suite 200, Ft. Collins, Colorado, 80525, telephone: (970) 225–3563.

SUPPLEMENTARY INFORMATION: The National Parks Air Tour Management Act of 2000 (the Act) was enacted on April 5, 2000, as Public Law 106–181. The Act required the establishment of the advisory group within 1 year after its enactment. The advisory group is comprised of a balanced group of representatives of general aviation, commercial air tour operations, environmental concerns, and Native American tribes.

The advisory group provides ''advice, information, and recommendations to the Administrator and the Director—

(1) On the implementation of this title [the Act] and the amendments made by this title;

(2) On commonly accepted quiet aircraft technology for use in commercial air tour operations over a national park or tribal lands, which will receive preferential treatment in a given air tour management plan;

(3) On other measures that might be taken to accommodate the interests of visitors to national parks; and

(4) At the request of the Administrator and the Director, safety, environmental, and other issues related to commercial air tour operations over a national park or tribal lands.''

Members of the advisory group may be allowed certain travel expenses as authorized by section 5703 of title 5, United States Code, for intermittent Government service.

An initial assignment was made to the group of seven members representing aviation, environmental and Native American cultural interests: Chip Dennerlein and Charles Maynard (environmental), Andy Cebula and Joe Corrao (aviation) and Germaine White (Native American). (See 66 FR 32974; June 19, 2001.) At the first meeting of the NPOAG, on August 28, 2001, the group decided that the addition of three new members would achieve a better balance of interests representing the group. The additional members would represent fixed wing air tour operators, environmental interests and Native American cultural interests.

By **Federal Register** notice of September 25, 2001, the FAA and NPS invited members of the public from the desired areas and interested in serving on the advisory group, to contact either the FAA or NPS contact person. Five persons expressed an interest in serving on the NPOAG in addition to the original names submitted earlier when the group was formed. The FAA and NPS have selected three persons to serve as additional members of the NPOAG: Alan Stephens will represent aviation interests, in particular those of fixed-wing operators; Richard Deertrack will represent Native American interests; and Susan Gunn will represent environmental interests. There are now a total of 10 members of the NPOAG.

The next meeting of the NPOAG is being planned for late 2001.

Issued in Washington, DC, on October 24, 2001.

Louis C. Cusimano,

Acting Director, Flight Standards Service.

[FR Doc. 01–27294 Filed 10–29–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Lower Santa Ynez River Fish Management Plan and Cachuma Project Biological Opinion, Santa Barbara County, CA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare an environmental impact statement/report (EIS/R).

SUMMARY: The Bureau of Reclamation (Reclamation) and the Cachuma Operation and Maintenance Board (COMB) will prepare a joint EIS/R on the management actions and projects included in the: (1) Lower Santa Ynez River Fish Management Plan (FMP) prepared by Reclamation and other agencies and parties involved in the Cachuma Project; and (2) the Biological Opinion (BO) prepared by the National Marine Fisheries Service (NMFS) on the Cachuma Project relative to the endangered southern steelhead population that resides in the Santa Ynez River. Management actions in the FMP and BO are designed to improve habitat for the steelhead along the river downstream of Lake Cachuma through mandated flow, habitat, and passage improvements.

DATES: Reclamation and COMB will hold a scoping meeting at 7 p.m. on November 19, 2001, in Solvang, California to seek public input on alternatives, possible impacts, and issues to be addressed in the EIS/R. Written comments on the scope of the alternatives and impacts to be considered should be sent to the address below by December 3, 2001.

ADDRESSES: The scoping meeting will be at the Veteran's Memorial Building, 1745 Mission Drive in Solvang. Written comments on the scope of the EIS/R should be sent to Mr. David Young, Bureau of Reclamation, South-Central California Area Office, 1243 N Street, Fresno, CA 93721, or by phone at 559–487–5127, or by fax to 559–487–5130.

FOR FURTHER INFORMATION CONTACT: Mr. David Young at the above address, telephone: (559) 487–5127.

SUPPLEMENTARY INFORMATION: In June 1994, the Memorandum of Understanding for Cooperation in Research and Fish Maintenance (Fish MOU) was executed among various parties with interests along the Santa Ynez River, and is currently being continued through the 2001 Fish MOU. The MOU provides water for fish studies and fish habitat and passage. Since 1993, the Santa Ynez River Technical Advisory Committee (SYRTAC), comprised of various biologists and resource agency personnel, has directed the studies and releases. Signatories to the 1994 MOU include Reclamation, the Santa Barbara County Water Agency, California Department of Fish and Game, U.S. Fish and Wildlife Service, Santa Ynez Water River Conservation District—Improvement District #1 (SYRWCD ID#1), Cachuma Conservation Release Board (CCRB), City of Lompoc, and Santa Ynez River Water Conservation District.

One of the primary objectives of the Fish MOU is to identify management actions to improve conditions for native fish and other aquatic resources, including southern steelhead. A draft FMP was prepared by the SYRTAC and issued for public comment in 2000. A final FMP was issued in October 2000. It incorporated the requirements in the BO for the Cachuma Project independently issued by NMFS in September 2000, which includes mandatory terms and conditions that require Reclamation to implement 15 specific reasonable and prudent measures to minimize take of the southern steelhead. Reclamation is currently implementing these measures in coordination with COMB. The 2001 Fish MOU supports the implementation of the BO and the FMP.

The FMP and BO management actions have been designed to benefit steelhead and other aquatic species directly and indirectly by: (1) Creating new habitat and improving existing habitat in the lower river and tributaries; (2) improving access to spawning and rearing habitats in the lower river and tributaries; and (3) increasing public awareness and support for beneficial actions on private lands. Many management actions can be implemented independent of others and as such, can be considered individual ''projects.''

The FMP management actions or projects would be implemented by one or more agencies, depending upon funding sources, location of a project on federal versus non-federal land, and whether the project is also a mandatory requirement of the steelhead BO. Agencies that may implement projects separately or jointly include

Reclamation, COMB, CCRB, SYRWCD ID#1, and Caltrans.

The EIS/R will address the following management actions and projects contained in the FMP and BO:

Actions by Reclamation and/or COMB, CCRB, SYRWCD ID#1, & Caltrans

- Surcharging the reservoir to 3.0 feet to provide water for fish accounts
- Mainstem rearing releases to achieve downstream target flows for rearing habitat; maintain residual pools; revise ramping; use Hilton Creek for releases; conjunctive use of water rights releases with releases for fish; using water from surcharging
- Fish passage supplementation using water from surcharging
- Adaptive Management Account for discretionary releases, using water from surcharging
- Hilton Creek habitat enhancement and fish passage projects: (1) Releases to Hilton Creek; (2) supplemental watering system; (3) cascade chute passage improvement; and (4) channel extension. In addition, Caltrans passage improvement at Hwy 154 culvert will be included.
- Fish rescue program

Actions That Require Cooperation of Other Agencies and Private Landowners

- Tributary passage impediment removal. Sites on public and private property on Quiota (6), El Jaro (1), Nojoqui (1) creeks.
- Tributary enhancement measures—riparian restoration; instream habitat enhancement; and conservation easements. These measures are located on private property on Quiota, Alisal, Salsipuedes, El Jaro, Nojoqui, and San Miguelito creeks.
- Mainstem habitat enhancement and protection.

The management actions described in the FMP/BO will be implemented in a phased manner over the next 7 years. Projects that will be implemented in the next 2–3 years include: modifying spillgates for 3-foot surcharge; implementing releases using long-term rearing, passage, and Adaptive Management accounts; installing pump system and variable intake facility for the Hilton Creek supplemental watering system; and completing the modification of passage impediments on Hilton Creek.

The EIS/R will evaluate the environmental impacts of the projects in the FMP/BO, as a whole, in a programmatic manner. As the FMP/BO is implemented over time, the EIS/R can be used for tiering project-specific Environmental Assessments. The EIS/R will address impacts of certain FMP/BO management actions at a project level such as surcharging Lake Cachuma to 3.0 feet and several of the Hilton Creek projects.

The FMP/BO is designed to improve environmental conditions for fish and aquatic and riparian habitats. As such, the EIS/R will be focused on incidental adverse impacts associated with implementing the FMP/BO projects. Most of these impacts would be temporary, and associated with construction and access. However, other unintended impacts would be addressed such as loss of oak trees at Lake Cachuma due to surcharging, displacement or disruption of recreational facilities at the lake due to surcharging, increased need for flood control maintenance in the river, and possible conversion of more arid habitats to aquatic habitats.

The following alternatives would be addressed in the EIS/R, as well as any others identified in the scoping process:

- No project alternative
- No surcharging alternative
- Phased surcharging: 1.8 feet, then 3.0 feet
- Smaller surcharging (1.8 feet)

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Dated: October 11, 2001.

Frank Michny,

Regional Environmental Officer.

[FR Doc. 01–27206 Filed 10–29–01; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Notice of Availability for public comment of the Draft Municipal and Industrial (M&I) Water Shortage Policy, Central Valley Project (CVP), California

SUMMARY: The Bureau of Reclamation (Reclamation) has developed, in consultation with the CVP municipal and industrial (M&I) Water Service contractors, a draft CVP M&I Water Shortage Policy. The purposes of the M&I Water Shortage Policy are to (1) define water allocations applicable to all CVP M&I contractors during times of reduced water supplies, (2) establish a minimum water supply level that with the M&I contractor's drought water conservation measures and other water supplies should sustain urban areas during drought situations, and (3) during severe or continuing droughts would, as much as possible, protect public health and safety, and (4) provide information to help M&I Contractors develop drought contingency plans. This policy is in furtherance of the June 9, 1997 Central Valley Project Improvement Act Administrative Proposal on Urban Water Supply Reliability.

DATES: Submit written comments on the Draft CVP M&I Water Shortage Policy on or before November 29, 2001 to the address below.

ADDRESSES: Copies of the Draft CVP M&I Water Shortage Policy may be requested by writing Alisha Sterud at the above address or by calling (916) 978–5195 or retrieved from the Web site at *www.mp.usbr.gov/cvpia/3404c/mi_shortage.html.* Written comments on the Draft CVP M&I Water Shortage Policy should be addressed to the Bureau of Reclamation, Attention: Alisha Sterud, MP–400, 2800 Cottage Way, Sacramento, CA 95825.

FOR FURTHER INFORMATION CONTACT: For additional information, please contact Alisha Sterud at (916) 978–5195, or e-mail: *asterud@mp.usbr.gov.*

SUPPLEMENTARY INFORMATION: The CVP (Central Valley Project) is operated under Federal statutes authorizing the CVP and by the terms and conditions of water rights acquired pursuant to California law. During any year, there may occur constraints on the availability of CVP water for an M&I (municipal and industrial) contractor under its contract. The cause of the water shortage may be drought, unavoidable causes, or restricted operations resulting from legal obligations or mandates. Those legal obligations include but are not limited to the Endangered Species Act, the Central Valley Project Improvement Act (CVPIA), and conditions imposed on CVP's water rights by the State of California. This policy establishes the terms and conditions regarding the constraints on availability of water supply for the CVP M&I water service contracts.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Dated: October 12, 2001.

Kirk Rodgers,

Acting Regional Director.

[FR Doc. 01–27207 Filed 10–29–01; 8:45 am]

BILLING CODE 4310–MN–M

INTERNATIONAL TRADE COMMISSION

[USITC SE–01–037]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: November 2, 2001 at 11 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 701-TA–403 and 731-TA–895–896 (Final)(Pure Magnesium from China and Israel)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on November 9, 2001).
5. Inv. Nos. 701-TA–405–408 and 731-TA–899–904 and 906–908 (Final)(Hot-Rolled Steel Products from China, India, Indonesia, Kazakhstan, the Netherlands, Romania, South Africa, Taiwan, Thailand, and Ukraine)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on November 13, 2001).
6. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: October 25, 2001.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–27338 Filed 10–26–01; 11:15 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *New Castle County, Delaware, Delaware Department of Transportation, and the State of Delaware*, Civil Action No.01:586–SLR, was lodged with the United States Court for the District of Delaware on August 29, 2001.

The proposed consent decree pertains to alleged violations of the Clean Water Act, 33 U.S.C. 1311 *et seq.* for the unpermitted discharge of pollutants into the navigable waters of the United States via New Castle County's and Delaware Department of Transportation's municipal separate storm sewer systems, and for failure to obtain an effective National Pollution Discharge Elimination System Response (''NPDES'') permit in violation of section 402 of the Clean Water Act, 33 U.S.C. 1342.

The proposed consent decree provides for the payment of $275,000 in civil penalties in the following amounts: $150,000 by defendant New Castle County, and $125,000 by defendant Delaware Department of Transportation. In addition, the consent decree requires New Castle County to extend a sanitary sewer to a group of New Castle County homes with failing septic systems and hooking up a minimum of 40 residential properties, up to a possible 85 properties. The consent decree requires the Delaware Department of Transportation to complete a stormwater retrofit project for a 5.58 mile long section of Interstate Highway 95.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the United States Attorney's Office for the District of Delaware, 1201 N. Market Street, Suite 1100, Box 2046, Wilmington, Delaware 19899–2046, Attn. Judith M. Kinney, Assistant United States Attorney.

The proposed consent decree may be examined at the office of the United States Attorney, District of Delaware, 1201 N. Market Street, Wilmington, DE and at the Region III Office of the Environmental Protection Agency, 1650 Arch St., Philadelphia, PA 19103. A copy of the proposed consent decree may be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. In requesting a copy please refer to the referenced case and enclose a check in the amount of $11.50 ($.25 per page reproduction cost), payable to the Consent Decree Library.

Dated: October 23, 2001.

Colm F. Connolly,

United States Attorney for the District of Delaware.

[FR Doc. 01–27200 Filed 10–29–01; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 247–2001]

Privacy Act of 1974; System of Records

Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), notice is hereby given that the Department of Justice is establishing a new system of records entitled ''Department of Justice Staffing and Classification System, Justice/JMD–021.''

The Department of Justice Staffing and Classification System is a system of records that allows certain bureaus within DOJ to recruit, examine, and hire applicants. The system is being established to enable Human Resource supervisors and managers to streamline the process for applicants applying for federal employment, and for applicant hiring.

Title 5 U.S.C. 552a(e) (4) and (11) provide that the public be given a 30-day period in which to comment. The Office of Management and Budget (OMB), which has oversight responsibilities under the Act, requires a 40-day period in which to conclude its review of the system. Therefore, please submit any comments by November 29, 2001. The public, OMB, and the Congress are invited to submit written comments to Mary Cahill, Management Analyst, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 1400, National Place Building).

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to

OMB and the Congress on the proposed new system of records.

Dated: October 19, 2001.

Janis Sposato,

Acting Assistant Attorney General for Administration.

JUSTICE/JMD–021

SYSTEM NAME:

Department of Justice (DOJ) Staffing and Classification System, Justice/JMD–021.

SYSTEM LOCATION:

The primary location of the system's server is at a DOJ contractor site in Tacoma, Washington; sub-systems are located in various offices within the Department of Justice (DOJ).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Non-Federal applicants applying for Federal employment; current and former Federal employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system include: applicant's name, social security number, residence address, phone number, employment history, and other personal information provided by the applicant in connection with applying for Federal employment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

This system is established and maintained under the authority of sections 1104, 1302, 3301, 3304, 3320, and 3361, of Title 5 of the United States Code; and Executive Order 9397.

PURPOSE OF THE SYSTEM:

This system is being established to evaluate applicants' qualifications and to facilitate selection of positions, through a subscription service to an internet based electronic recruitment system. Supervisors and managers will review a list of eligible applicants to fill position vacancies. Under the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), Federal agencies are required by October 21, 2003, to provide the public with alternate ways for submitting and disclosing paperwork, such as, electronically, when practicable. This streamlined process will be used primarily by Human Resource offices to produce lists of eligibles for position vacancies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Pursuant to subsection (b)(3) of the Privacy Act, relevant and necessary information may be disclosed from this system as follows:

A. In an appropriate proceeding before a court, grand jury, or administrative or regulatory body when records are determined by DOJ to be arguably relevant to the proceeding.

B. To an actual or potential party to litigation or the party's authorized representative for the purpose of negotiation or discussion on such matters as settlement, plea bargaining, or in informal discovery proceedings.

C. To the Office of Personnel Management for internal audits of case files under the authority of 5 CFR 5.2(b).

D. To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

E. To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of an individual who is the subject of the record.

F. To the General Services Administration and National Archives and Records Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

G. Where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, to any civil or criminal law enforcement authority or other appropriate agency, whether Federal, State, local, foreign, or tribal, charged with the responsibility of investigating or prosecuting such a violation or enforcing or implementing a statute, rule, regulation, or order.

H. To a Federal agency or entity that requires information relevant to a decision concerning the hiring, appointment, or retention of an employee, the issuance of a security clearance, the conduct of a security or suitability investigation, or pursuit of other appropriate personnel matter.

I. To a Federal, State, local, or tribal agency or entity that requires information relevant to a decision concerning the letting of a license or permit, the issuance of a grant or benefit, or other need for the information in performance of official duties.

J. To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records.

K. To a former employee of the Department for purposes of: responding to an official inquiry by a Federal, State, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

L. To such recipients and under such circumstances and procedures as are mandated by federal statute or treaty.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM: STORAGE:

Records will be stored electronically at a DOJ contract site in Tacoma, Washington, and a back-up tape will be stored at each DOJ office site.

RETRIEVABILITY:

Records are retrieved by the applicant name, social security number, or other unique identifier.

SAFEGUARDS:

The electronic records are secured with state-of-the art security management and firewall technology and are protected on a twenty-four hours a day basis with intrusion detection monitoring using Internet Security Systems (ISS) Real Secure. Data is protected by encryption. Access is restricted to those who have a user identification, password, certificate of authentication, and permissions created and maintained by the JMD Personnel Staff.

RETENTION AND DISPOSAL:

Records are to be retained and disposed of in accordance with the agency retention plan; the National Archives and Records Administration, General Records Schedule 1; and Part 293 of Title 5, Code of Federal Regulations.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Human Resources, JMD Personnel Staff, U.S. Department of Justice, 950 Pennsylvania Ave, NW., Washington, DC 20530.

NOTIFICATION PROCEDURES:

To determine whether the system may contain records relating to you, write to the Director of Human Resources, JMD Personnel Staff, identified above.

RECORD ACCESS PROCEDURES:

Address access requests to the Director of Human Resources, JMD

Personnel Staff, at the address provided above. Include the name or number of the system of records; your full name and address and other information as instructed in 28 CFR 16.41(d); a description of information being sought; and a time frame during which the records may have been generated.

CONTESTING RECORDS PROCEDURE:

Individuals contesting or amending information should direct their request to the Director of Human Resources, JMD Personnel Staff, listed above, stating clearly and concisely what information is being contested, the reason for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Information contained within the Department of Justice Classification and Staffing System is obtained from applicants or current/former employees.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 01–27199 Filed 10–29–01; 8:45 am]

BILLING CODE 4410–FB–P

DEPARTMENT OF JUSTICE

Notice of Lodging of a Bankruptcy Settlement Agreement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that a proposed Stipulation Between Reorganized Debtor and the Environmental Protection Agency Regarding Settlement of Dispute Related to Any and All Claims of the Environmental Protection Agency (hereinafter ''Bankruptcy Settlement Agreement'') in *In re Velie Circuits, Inc.*, Chap. 11, Case No. SA 96–11768 LR, was lodged on or about October 9, 2001, with the United States Bankruptcy Court for the Central District of California, Santa Ana Division. The proposed Bankruptcy Settlement Agreement would resolve the United States' claims under section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9607, as amended, against the debtor related to response costs incurred by the Environmental Protection Agency in connection with the release of hazardous substances at the Omega Chemical Superfund Site (''Site'') in Whittier, California. In its proof of claim, the United States alleged that the debtor is liable as a person who, by contract, agreement, or otherwise, arranged for the disposal of hazardous substances at the Site. Under the proposed Bankruptcy Settlement Agreement, the debtor will grant the United States an allowed general unsecured claim in the bankruptcy in the amount of $80,000. The United States will be made current relative to past distributions made to general unsecured claimants, and will thereafter share, pro-rate in all future distributions made to general unsecured payments.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Bankruptcy Settlement Agreement. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20530, and should refer to *In re Velie Circuits, Inc.*, Chap. 11, Case No. SA 96–11768 LR (USBC C.D. Cal.), DOJ Ref. #90–11–3–06529/1.

The Consent Decree may be examined at the Region 9 Office of the Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105. A copy of the proposed Bankruptcy Settlement Agreement may be obtained by mail from the Consent Decree Library, Post Office Box 7611, Washington, DC 20044. In requesting copies please refer to the referenced case and enclose a check in the amount of $1.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Ellen Mahan,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 01–27201 Filed 10–29–01; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of October, 2001.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–39,454; Coe Manufacturing Co., Painesville, OH

TA–W–40,122; Texfi Industries, Haw River, NC

TA–W–39,351; AP Green Industries, Mexico, MO

TA–W–38,962; Smith Systems Manufacturing, Inc., Plano, TX

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–39,782; Con Agra Flour Milling Plant, North Kansas City, MO

TA–W–39,855; The Xerox Corp., Oklahoma City, OK

TA–W–39,830; Werner Co., Keller Ladder Div., Swainsboro, GA

TA–W–39,859; Fonda Group, Inc., Maspeth, NY

The workers firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–39,934; Techbooks Shippinsburg, PA

TA–W–39,870; Grupo Mexico ASARCO, Inc., El Paso, TX

TA–W–39,746 & A; Cody Energy LLC, Denver, CO and Houston, TX

The investigation revealed that criteria (2) and (3) has not been met. Sales or production did not decline during the relevant period as required for certification. Increased imports did not contribute importantly to worker separations at the firm.

TA–W–39,110; Standard Register, Rocky Mount, VA

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–40,047; Carol Ann Fashions, Inc., Hastings, PA: August 31, 2000.
TA–W–39,966; Blue Water Fiber L.P., Port Huron, MI: August 17, 2000.
TA–W–39,745; Hilti, Inc., Hilti Steel Industry Div., Employed at CSC Ltd, Warren, OH: July 13, 2000.
TA–W–39,529; Quaker Oats Co., St. Joseph, MO: June 14, 2000.
TA–W–39,867; Glaxo Smith Kline, Piscataway, NJ: August 7, 2000.
TA–W–39,655; International Components Technology Corp., San Jose, CA: June 29, 2000.
TA–W–39,462; Monticello Manufacturing Co., Inc., Monticello, KY: June 1, 2000.
TA–W–39,833; Plymouth Garment Co., Plymouth, NC: August 3, 2000.
TA–W–39,344; Americ Disc, Inc., Clinton, TN: May 15, 2000.
TA–W–39,999; Gerber Childrenswear, Inc., Pelzer, SC: August 20, 2000.
TA–W–39,477; NYCO Minerals, Inc., Wilsboro, NY: May 31, 2000.
TA–W–39,753; Cumberland Wood Products, Inc., Helenwood, TN: July 18, 2000.
TA–W–39,971; Rundel Products, Inc., Portland, OR: August 22, 2000.
TA–W–39,951; Rotorex Co., Inc., Walkersville, MD: August 20, 2000.
TA–W–39,844; Paramount Headwear, Inc., Marble Hill, MO: August 9, 2000.
TA–W–39,890; Cutler-Hammer, Power Management Products Center, Eaton Corp., Pittsburgh, PA: August 6, 2001.
TA–W–39,729; Evenflo Co., Inc., Jasper, AL: July 10, 2000.
TA–W–39,327; Simpson Timber Co., Commencement Bay Sawmill, Tacoma, WA: May 8, 2000.
TA–W–39,795; Garland Shirt Co., Garland, NC: June 30, 2000.
TA–W–39,671; Fiber Optic Network Solutions, Northboro, MA: July 9, 2000.
TA–W–39,113; Petticoat Junction, Inc., North Bergen, NJ: April 11, 2000.
TA–W–39,755 & A, B; Ethan Allen, Island Pont, VT, Frewsburg, NY and Asheville, NC: July 12, 2000.
TA–W–39,549; Chicago Miniature Lamps, Wynnewood, OK: June 11, 2000.
TA–W–39,702; Southern Furniture Reproductions, Inc., Elizabethtown, NC: July 12, 2000.
TA–W–39,665; IMS, Employed at CSC Ltd, Warren, OH: June 19, 2000.
TA–W–39,543; Tyco Electronics, Fiber Optics Div., Menlo Park, CA: June 10, 2000.
TA–W–39, 405; Vishay Roederstein Electronics, Inc., Statesville, NC: May 23, 2000.
TA–W–39,590; Lees Curtain Co., The Arlee Group, Bridgeport, CT: June 22, 2000.
TA–W–39,130; ECM Motor Co., Div. Of Invensys Motor Systems, Elkhorn, WI: April 12, 2000.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with section 250(b), Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of October, 2001.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–05066; Carol Ann Fashions, Inc., Hastings, PA.
NAFTA–TAA–05334; Texfi Industries, Haw River, NC.
NAFTA–TAA–05292; Rotorex Co., Inc., Walkersville, MD.
NAFTA–TAA–05156; Con Agra Flour MIlling Plant, Buffalo, NY.
NAFTA–TAA–05155; Con Agra Flour Milling Plant, North Kansas City, MO.
NAFTA–TAA–04709; Orion Bus Industries, Inc., Oriskany, NY.
NAFTA–TAA–04963; Monticello Manufacturing Co., Inc., Monticello, KY.

The workers firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

NAFTA–TAA–05286; I2 Technologies, Yorba Linda, CA.

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–05194; Robert Bosch Corp., Ashland, OH: august 3, 2000.
NAFTA–TAA–05080; Great Western International, Portland, OR: July 3, 2000.
NAFTA–TAA–05094; Contempora Fabrics, Inc., Lumberton, NC: July 16, 2000.
NAFTA–TAA–04940; Bradford Electronics, Inc., Bradford, PA: May 17, 2000.
NAFTA–TAA–04772; ECM Motor Co., Div. Of Invensys Motor Systems, Elkhorn, WI: April 9, 2000.
NAFTA–TAA–05323; Armada, Inc., Zinc Die Cast Department, Secondary Department, Leland, NC: September 12, 2000.
NAFTA–TAA–05256; Blue Water Fiber L.P., Port Huron, MI: August 17, 2000.
NAFTA–TAA–05270; Gerber Childrenswear, Inc., Pelzer, SC: August 20, 2000.
NAFTA–TAA–05318; United Tool and Die, Inc., Meadville, PA: August 22, 2000.
NAFTA–TAA–05008; Tyco Electronics, Fiber Optics Div., Menlo Park, CA: June 10, 2000.
NAFTA–TAA–05222; Cutler-Hammer, Power Management Products Center, Eaton Corp., Pittsburgh, PA: August 6, 2000.
NAFTA–TAA–05177; Shermag Corp. d/b/a/ Woodtek, North Anson, ME: June 27, 2000.
NAFTA–TAA–05211; New Holland North American, Inc., Belleville, PA: August 10, 2000.
NAFTA–TAA–05199; Plymouth Garment Co., Plymouth, NC: August 3, 2000.

NAFTA–TAA–04913; Americ Disc, Inc., Clinton, TN: May 15, 2000.

I hereby certify that the aforementioned determinations were issued during the month of October, 2001. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: October 19, 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 01–27234 Filed 10–29–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39, 632 & NAFTA–5059; TA–W–39, 632A & NAFTA–5059A; TA–W–39, 632B & NAFTA–5059B; TA–W–39, 632C & NAFTA–5059C]

JPS Apparel Fabrics Corporation Greenville, SC; JPS Apparel Fabrics Corporation South Boston, VA; JPS Apparel Fabrics Corporation New York, NY; JPS Apparel Fabrics Corporation Laurens, SC: Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of August 28, 2001, the company requested administrative reconsideration of the Department of Labor's Notices of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance JPS Apparel Fabrics Corporation, Greenville, South Carolina (TA–W–39, 632) including the following locations: South Boston, Virginia (TA–W–39, 632A); New York, New York (TA–W–39, 632B) and Laurens, South Carolina (TA–W–39, 632C) and NAFTA-Transitional Adjustment Assistance (NAFTA–5059 & (A–C) respectively) for workers of the subject firm. The denial notices applicable to workers of JPS Apparel Fabrics Corporation, were signed on August 21, 2001, and published in the **Federal Register** on September 11, 2001, TA–W–39, 632 (66 FR 47242) and NAFTA–5059 (66 FR 47243).

The company presents new information regarding the customer survey conducted by the Department of Labor. The company believes a major customer may be importing spun and filament greige woven apparel fabric, while decreasing their purchases from the subject plant during the relevant period.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefor, granted.

Signed at Washington, DC, this 10th day of October, 2001.

Edward A. Tomchick,

Director, Division of, Trade Adjustment Assistance.

[FR Doc. 01–27244 Filed 10–29–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,936]

American Smelting and Refinery Company (ASARCO), El Paso, TX; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on September 4, 2001 in response to a worker petition, which was filed on August 14, 2001, on behalf of workers at American Smelting and Refinery Company (ASARCO), El Paso, TX.

The petitioning group of workers is subject to an ongoing petition investigation, GRUPO Mexico Asarco, Inc., El Paso, Texas (TA–W–39,870). That petition was processed under the name. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 15th day of October 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–27238 Filed 10–29–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–38,642]

Global Tex LLC Doing Business as Bates of Maine, Lewiston, MW; Amended Notice of Revised Determination on Reconsideration

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273), the Department of Labor issued a Notice of Revised Determination on Reconsideration on September 18, 2001, applicable to workers of Global Tex LLC, doing business as Bates of Maine, Lewiston, ME. The notice was published in the **Federal Register** on October 4, 2001 (66 FR 50687).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of cotton blankets, throws and bedspreads.

New findings show that there was a previous certification, TA–W–33,913, issued on March 25, 1998, for workers of Bates of Maine, Lewiston, Maine who were engaged in employment related to the production of cotton blankets, throws and bedspreads. That certification expired March 25, 2000. To avoid an overlap in worker group coverage, this certification is being amended to change the impact date from January 23, 2000 to March 26, 2000, for workers of the subject firm.

The amended notice applicable to TA–W–38,642 is hereby issued as follows:

All workers of Global Tex LLC, doing business as Bates of Maine, Lewiston, Maine, who became totally or partially separated from employment on or after March 26, 2000, through September 18, 2003, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 10th day of October, 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 01–27241 Filed 10–29–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–38, 427]

M.H. Rhodes (Now Known as Cramer Company, Division of Chestnut Group, Inc.) Avon, CT; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 9, 2001, applicable to workers of M.H. Rhodes, Avon, Connecticut. The notice was published in the **Federal Register** on August 23, 2001 (66 FR 44378).

At the request of the State agency, the Department reviewed the certification

for workers of the subject firm. The workers are engaged in the production of meters and timers. New information received from the company shows that in September, 2001, M.H. Rhodes, Cramer Company was sold to the Chestnut Group, Inc. and became known as Cramer Company, Division of Chestnut Group, Inc.

Information also shows that workers separated from employment at the subject firm had their wages reported under a separate unemployment insurance (UI) tax account for M.H. Rhodes, now known as Cramer Company, Division of Chestnut Group, Inc.

Accordingly, the Department is amending the certification to properly reflect this matter.

The amended notice applicable to TA–W–38, 427 is hereby issued as follows:

All workers of Cramer Company, Division of Chestnut Group, Inc., (formerly M.H., Rhodes), Avon, Connecticut who became totally or partially separated from employment on or after December 1, 1999, through August 9, 2003, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, the 16th day of October 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–27247 Filed 10–29–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,079]

Glenmore Plastic Industries, Inc., Professional Employer Group Services LLC Brooklyn, NY; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 174 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on June 4, 2001, applicable to workers of Glenmore Plastic Industries, Inc., Brooklyn, New York. The notice was published in the **Federal Register** on June 27, 2001 (66 FR 34257).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of printed material for shower curtains, table covers and awnings. The State and company reports that all workers at Glenmore Plastic Industries, Inc. had their wages reported under a separate unemployment insurance (UI) tax account for Professional Employer Group Services LLC.

The intent of the Department's certification is to include all workers of Glenmore Plastic Industries, Inc. who were adversely affected by increased imports.

Accordingly, the Department is amending the certification to properly reflect this matter.

The amended notice applicable to TA–W–39,079 is hereby issued as follows:

All workers of Glenmore Plastic industries, Inc., Professional Employer Group Services LLC, Brooklyn, New York, who became totally or partially separated from employment on or after March 30, 2000, through June 4, 2003, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 15th day of October, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–27246 Filed 10–29–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,027]

Hayward Pool Products, Inc. a/k/a Hayward Industries, Inc., Kings Mountain, NC; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on September 17, 2001, in response to a worker petition which was filed by the company on behalf of its workers at Hayward Pool Products, Inc., a/k/a Hayward Industries, Inc., Kings Mountain, North Carolina. The workers produce products related to the swimming pool industry, i.e. filters, skimmers, spare parts, etc.

The petitioner has requested that the petition be withdrawn. Consequently further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 15th day of October, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–27237 Filed 10–29–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,129 and TA–W–39, 129A]

International Specialty Alloys, Inc. Edinburg; and International Specialty Alloys, Inc. New Castle: Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on April 30, 2001 in response to a petition filed on the same date by company officials on behalf of workers at International Specialty Alloys, Inc., Edinburg and New Castle, Pennsylvania.

The petitioners have requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 15th day of October, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–27239 Filed 10–29–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,903]

New Holland North America, Inc. Belleville, PA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on August 27, 2001, in response to a petition filed by a company official on behalf of workers at New Holland North America, Inc., Belleville Pennsylvania.

The company official submitting the petition has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 15th day of October, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–27235 Filed 10–29–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39, 085]

Samuel Bent Llc, Gardner, MA; Notice of Termination of Investigation.

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on April 23, 2001, in response to a petition, which was filed by workers on behalf of all workers at Samuel Bent Llc, Gardner, Massachusetts.

The Department has been unable to locate an official of the company to provide the information necessary to issue a determination. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 17th day of October, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–27248 Filed 10–29–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than November 9, 2001.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than November 9, 2001.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 24th day of September, 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted on 09/24/2001]

TA–W	Subject firm (Petitioners)	Location	Date of petition	Product(s)
40,059	Valeo (IUE)	Rochester, NY	09/10/2001	Automotive Components.
40,060	Interment Corp (Wrks)	Radford, VA	09/06/2001	Automotive Parts.
40,061	Parker Hannifer (Wrks)	Otsego, Mi	09/04/2001	Assemble Manifold.
40,062	Tradewinds Cleaning (Co.)	Neosho, MO	09/04/2001	Oasis Vacuums.
40,063	Laclede Steel Co (Wrks)	St. Louis, MO	09/05/2001	Semifinished Billets.
40,064	H and H Tool (Wrks)	Meadville, PA	09/06/2001	Components for Plastic Molds
40,065	Haemer-Wright Tool (Wrks)	Sawgertown, PA	09/04/2001	Spare Machine Parts.
40,066	Stewart Connector Systems (Wrks)	Glen Rock, PA	09/10/2001	Molded, Shielded Modular Components.
40,067	Stanly Knitting Mills (Co)	Oakboro, NC	09/11/2001	Embroidery of Caps—Headwear.
40,068	Damy Industries (Co.)	Athens, TN	07/19/2001	Ladies' Apparel.
40,069	Westvaco Corp. (PACE)	Tyrone, PA	09/11/2001	Fine Paper.
40,070	Engelhard Corp. (Co.)	McIntyre, GA	09/07/2001	Mining & Kaolin Products.
40,071	PTC Alliance (USWA)	Darlington, PA	09/04/2001	Mechanical Draw Tubing.
40,072	Converter Concepts (Wrks)	Memphis, MO	09/11/2001	Electronic Components.
40,073	Micro Tool & Mfg. (Co.)	Meadville, PA	09/07/2001	Plastic Injection Molds and Components.
40,074	Kentucky Apparel (Co.)	Tompkinsville, KY	09/05/2001	Blue Jeans.
40,075	Pohlman Foundry Co., Inc. (Wrks)	Buffalo, NY	09/06/2001	Compressor Housings.
40,076	Rockwell Automation (IUE)	Milwaukee, WI	09/06/2001	Industrial Controls, Switches.
40,077	Prime Tanning (Co.)	Rochester, NH	09/04/2001	Side Leather—Footwear.
40,078	Guilford Mills (Co.)	Pine Grove, PA	09/10/2001	Finished Fabrics.
40,079	Zilog, Inc. (Co.)	Nampa, ID	08/31/2001	Integrated Circuits.
40,080	Lyon Fashions, Inc. (Co.)	McAlisterville, PA	09/13/2001	Ladies' Dresses.
40,081	Goss Graphics (IAM&AW)	Cedar Rapids, IA	09/05/2001	Web Offset Printing Presses.
40,082	Millennium Inorganic (USWA)	Baltimore, MD	09/04/2001	Titanium Dioxide.
40,083	Hooker Furniture (Co.)	Martinsville, VA	09/07/2001	Bedroom Funiture.
40,084	Mettler Toledo Process (Co.)	Woburn, MA	09/07/2001	Glass Blowing and Assembly.
40,085	NACCO Materials (Wrks)	Sulligent, AL	09/07/2001	Steel Axles, Drive Axles.
40,086	Mail Well Envelope (Wrks)	Portland, OR	09/07/2001	Envelopes.
40,087	Spicer Axle (Co.)	Columbia, MO	09/07/2001	Rear Axles.
40,088	Shape Global Technology (Wrks)	Sanford, ME	08/08/2001	Video Cassettes and Accessories.
40,089	Bank Manufacturing Co. (Co.)	Havelock, NC	09/04/2001	Medical Apparel & Patient Gowns.
40,090	New England Castings (Wrks)	Hiram, ME	09/07/2001	Investment Castings.
40,091	Bolivar Tees (Wrks)	Bolivar, MO	09/04/2001	T-Shirts.
40,092	MICTEC, Inc. (Co.)	Canonsburg, PA	09/07/2001	Refractory Materials for Steel Industry.
40,093	Revere Ware Corp. (Wrks)	Clinton, IL	09/04/2001	Stainless Steel Cookware.
40,094	Heraeus QuartzTech (Co.)	Buford, GA	09/30/2001	Quartz Glass Components.

APPENDIX—Continued

[Petitions Instituted on 09/24/2001]

TA–W	Subject firm (Petitioners)	Location	Date of petition	Product(s)
40,095	Galina Bonquet, Inc. (Co.)	New York, NY	08/31/2001	Bridal Gowns.
40,096	Crenlo, Inc, (Wrks)	Rochester, MN	09/05/2001	Metal Enclosures.
40,097	Ismeca USA (Co.)	Vista, CA	08/25/2001	Semi-Conductors.
40,098	Toastmaster, Inc.	Boonville, MO	09/04/2001	Warehousing—Small Appliances.
40,099	Shasta Paper Co. (PACE)	Anderson, CA	09/04/2001	Specialty Paper.
40,100	FMC Technologies (Wrks)	Homer City, PA	08/10/2001	Bowl Feeders.
40,101	Lee Dyeing Co. of NC (Co.)	Gloversville, NY	07/07/2001	Fabric Dyeing.
40,102	Joplin Manufacturing c	Joplin, MO	09/03/2001	Explosive—Mining.
40,103	ASARCO, Inc. (Co.)	Sahuartia, AZ	08/31/2001	Copper Concentrate.
40,104	ASARCO, Inc. (Co.)	Hayden AZ	08/03/2001	Copper Concentrate.
40,105	CTS Reeves Frequency (Co.)	Sandwich, IL	08/21/2001	Crystal Oscillators.

[FR Doc. 01–27240 Filed 10–29–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,330]

Volunteer Leather, Milan, Tennessee; Notice of Negative Determination Regarding Application for Reconsideration

By application of June 29, 2001, the company requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice applicable to workers of Volunteer Leather, Milan, Tennessee was issued on June 4, 2001, and was published in the **Federal Register** on June 27, 2001 (66 FR 34256).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The investigation findings revealed that criterion (3) of the group eligibility requirements of Section 222 of the Trade Act of 1974 was not met. Increased imports did not contribute importantly to worker separations at the subject firm. The preponderance in the declines in employment at the Volunteer Leather, Milan, Tennessee is the direct result of plant production being shifted to another domestic location. Reported company sales and production increased during the relevant period.

The request for reconsideration claims that the reported company-wide sales and production during the original investigation, would have reflected a decline in sales and production if it were not for the acquisition of the subject firm during June 2000. The petitioner supplied specific data pertaining to the Milan, Tennessee plant production during the first quarter of 2001. The application also supplies estimated company-wide production, if the subject plant was included in the company figures for the first quarter of 2000. Extrapolating the estimated production figures from the original reported production depicts stable plant production during the two comparable periods. The findings of the original investigation indicated that ''the preponderance in the declines in employment at Volunteer Leather, Milan, Tennessee is the direct result of plant production being shifted to another domestic location. The domestic shift is due to company-wide excess capacity.'' The information the claimant provides depicts excess capacity at another company location, in combination of steady production at the subject plant, thus supporting the original decision.

The petitioner further states that the increasing cost of cattle hides (raw material) and imports of shoes (the product the leather is produced for) are contributing factors to layoffs at the subject plant. Neither factor is a basis for certifying the worker group at Volunteer Leather producing finished leather.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington DC, this 15th day of October 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 01–27243 Filed 10–29–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,654]

Wilcox Forging Company, Mechanicsburg, PA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on September 17, 2001, applicable to workers of Wilcox Forging Company, Mechanicsburg, Pennsylvania. The notice was published in the **Federal Register** on October 4, 2001 (FR 66 50685).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers produce drop forgings for the automotive industry.

New findings show that there was a previous certification, TA–W–36,179, issued on May 21, 1999, for workers of Wilcox Forging Corporation, Mechanicsburg, Pennsylvania who were engaged in employment related to the production of drop forgings for the

automotive industry. That certification expired May 21, 2001. To avoid an overlap in worker group coverage, the certification is being amended to change the impact date from July 1, 2000 to May 22, 2001, for workers of the subject firm.

The amended notice applicable to TA–W–39,654 is hereby issued as follows:

All workers of Wilcox Forging Company, Mechanicsburg, Pennsylvania, who became totally or partially separated from employment on or after May 22, 2001, through September 17, 2003, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 16th day of October, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–27245 Filed 10–24–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,313]

Lynn Electronics Feasterville, Pennsylvania; Notice of Negative Determination on Reconsideration

On September 5, 2001, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The notice was published in the **Federal Register** on September 21, 2001 (66 FR 48714).

The Department initially denied TAA to workers of Lynn Electronics, Feasterville, Pennsylvania because the ''contributed importantly'' group eligibility requirement of section 222(3) of the Trade Act of 1974, as amended, was not met. The workers at the subject firm were engaged in employment related to the production of wire and cable and cordsets.

The petitioner provided evidence that further survey may be warranted regarding customer purchases of communication wire products.

On reconsideration, the Department contacted the company for additional customers of the subject firm. The company indicated that the products produced at the subject plant are shopped to a sister facility (warehouse). Those products produced at the subject plant account for approximately one-fourth of the total sales at the sister facility. The remainder of the products sold at the sister facility are in fact imported. Only a negligible portion of the imports are like or directly competitive with products produced at the subject plant.

The investigation further revealed that the overwhelming preponderance in the declines in employment leading to the closure of the plant is related to the company being able to purchase domestically produced products at a lower cost than those produced at the subject plant.

Any declines in sales are the direct result of the phase down of the plant prior to the closure of the plant.

A customer survey was not conducted due to the conditions as described above.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance for workers and former workers of Lynn Electronics, Feasterville, Pennsylvania.

Signed at Washington, DC, this 16th day of October, 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 01–27242 Filed 10–29–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–5309]

Hayward Pool Products, Inc., a/k/a Hayward Industries, Inc., Kings Mountain, North Carolina, Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act and in accordance with section 250(a), Subchapter D, Chapter 2, title II of the Trade Act of 1974, as amended (19 U.S.C. 2331), an investigation was initiated on September 4, 2001, in response to a worker petition which was filed by the company on behalf of its workers at Hayward Pool Products, Inc., a/k/a/ Hayward Industries, Inc., Kings Mountain, North Carolina. The workers produce products related to the swimming pool industry, i.e. filters, skimmers, spare parts, etc.

The petitioner has requested that the petition be withdrawn. Consequently further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 15th day of October, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–27236 Filed 10–29–01; 8:45 am]

BILLING CODE 4510–30–M

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 2001–7 CARP SD 2000]

Ascertainment of Controversy for the 2000 and 2001 Satellite Royalty Funds

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice with request for comments and notices of intention to participate.

SUMMARY: The Copyright Office of the Library of Congress directs all claimants to royalty fees collected under the section 119 statutory license in 2000 to submit comments as to whether a Phase I or Phase II controversy exists as to the distribution of those fees, and a Notice of Intention to Participate in a royalty distribution proceeding. Parties who submit a Notice of Intention to Participate may submit comments on the motion for a partial distribution filed by the Public Broadcasting Service.

DATES: Comments and Notices of Intention to Participate are due by November 29, 2001. Reply comments are due by December 31, 2001.

ADDRESSES: If sent by mail, an original and five copies of written comments and a Notice of Intention to Participate should be addressed to: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024. If hand delivered, an original and five copies should be brought to: Office of the General Counsel, James Madison Memorial Building, Room 403, First and Independence Avenue, SE., Washington, DC 20540.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Tanya M. Sandros, Senior Attorney, Copyright Arbitration Royalty Panels, P.O. Box 70977, Southwest Station, Washington, DC 20024. Telephone (202) 707–8380. Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION: Each year satellite carriers submit royalties to the Copyright Office for the retransmission of over-the-air broadcast signals to their subscribers. 17 U.S.C. 119. These royalties are, in turn, distributed in one of two ways to copyright owners whose works were included in a

retransmission of an over-the-air broadcast signal and who timely filed a claim for royalties with the Copyright Office. The copyright owners may either negotiate the terms of a settlement as to the division of the royalty fees, or the Librarian of Congress may convene a Copyright Arbitration Royalty Panel (''CARP'') to determine the distribution of the royalty fees that remain in controversy. *See* 17 U.S.C. chapter 8.

During the pendency of any proceeding, the Librarian of Congress may distribute any amounts that are not in controversy, provided that sufficient funds are withheld to cover reasonable administrative costs and to satisfy all claims with respect to which a controversy exists under his authority set forth in section 119(b)(4)(C) of the Copyright Act, title 17 of the United States Code. *See*, e.g., Orders, Docket No. 97–1 CARP SD 92–95 (dated March 17, 1997) and Docket No. 2000–7 CARP SD 96–98 (dated February 23, 2001). Therefore, the Copyright Office must, prior to any distribution of the royalty fees, ascertain who the claimants are and the extent of any controversy over the distribution of the royalty fees.

The CARP rules provide that:

> In the case of a royalty fee distribution proceeding, the Librarian of Congress shall, after the time period for filing claims, publish in the **Federal Register** a notice requesting each claimant on the claimant list to negotiate with each other a settlement of their differences, and to comment by a date certain as to the existence of controversies with respect to the royalty funds described in the notice. Such notice shall also establish a date certain by which parties wishing to participate in the proceeding must file with the Librarian a notice of intention to participate.

37 CFR 251.45(a). The Copyright Office may publish this notice on its own initiative, *see*, e.g., 64 FR 23875 (May 4, 1999); in response to a motion from an interested party, *see*, e.g., 65 FR 56941 (September 20, 2000), or in response to a petition requesting that the Office declare a controversy and initiate a CARP proceeding. In this case, the Office has received a motion for distribution of PBS National Satellite Feed royalty funds for 2000 and 2001.

However, before considering the merits of the motion for a partial distribution of the 2000 and 2001 satellite royalty fees, the Office must first determine who has a significant interest in participating in any proceeding concerning the distribution of these fees. Therefore, the Office is directing any claimant to 2000 satellite royalty fees collected under the section 119 statutory license to file a Notice of Intention to Participate in a royalty distribution proceeding, the purpose of which will be to consider the proper distribution of these fees. Only a party who files a Notice of Intention to Participate may submit comments on the PBS motion for a distribution of the PBS National Satellite Feed Royalty Funds for Calendar Years 2000 and 2001.

Parties are reminded that informal service of a pleading to any party prior to the publication of a notice in the **Federal Register** requesting Notices of Intention to Participate in a CARP proceeding is for informational purposes only. The ''official service list'' for any distribution or rate adjustment proceeding is compiled by the Librarian of Congress from the notices of intention filed with this office in response to the notice published in the **Federal Register**. Section 251.44 of title 37 of the Code of Federal Regulations provides that:

> The Librarian of Congress shall compile and distribute to those parties who have filed a notice of intent to participate, the official service list of the proceeding, which shall be composed of the names and addresses of the representatives of all the parties to the proceeding. In all filings, a copy shall be served upon counsel of all other parties identified in the service list, or, if the party is unrepresented by counsel, upon the party itself.

37 CFR 251.44(f) (emphasis added). Consequently, no party has been properly served in this proceeding because the official service list has yet to be created. Nevertheless, the Copyright Office will consider the oppositions already filed with the Copyright Office by SESAC, Inc.; Program Suppliers and Joint Sports, jointly; and the American Society of Composers, Authors and Publishers (''ASCAP'') and Broadcast Music, Inc. (''BMI'') (collectively, the ''Music Claimants'') in response to the Public Broadcasting Service (''PBS'') motion. These parties may also submit supplemental filings to their oppositions up to the due date set forth in this notice. Similarly, any response to an opposition already filed with the Office will be considered a reply comment for purposes of this proceeding, provided that the submitting party has filed a timely Notice of Intention to Participate

1. Notice of Intention To Participate

Section 251.45(a) of the rules, 37 CFR, requires that a Notice of Intention to Participate be filed in order to participate in a CARP proceeding, but it does not prescribe the contents of the Notice. Recently, in another proceeding, the Library has been forced to address the issue of what constitutes a sufficient Notice and to whom it is applicable. *See* Orders in Docket No. 2000–2 CARP CD 93–97 (June 22, 2000, and August 1, 2000); *see also* 65 FR 54077 (September 6, 2000). These rulings will result in a future amendment to §251.45(a) to specify the content of a properly filed Notice. In the meantime, the Office advises those parties filing Notices of Intention to Participate in this proceeding to comply with the following instructions.

Each claimant that has a dispute over the distribution of the 2000 satellite royalty fees, either at Phase I or Phase II, shall file a Notice of Intention to Participate that contains the following: (1) The claimant's full name, address, telephone number, and facsimile number (if any); (2) identification of whether the Notice covers a Phase I proceeding, a Phase II proceeding, or both; and (3) a statement of the claimant's intention to fully participate in a CARP proceeding.

Claimants may, in lieu of individual Notices of Intention to Participate, submit joint Notices. In lieu of the requirement that the Notice contain the claimant's name, address, telephone number and facsimile number, a joint Notice shall provide the full name, address, telephone number, and facsimile number (if any) of the person filing the Notice and it shall contain a list identifying all the claimants that are parties to the joint Notice. In addition, if the joint Notice is filed by counsel or a representative of one or more of the claimants identified in the joint Notice, the joint Notice shall contain a statement from such counsel or representative certifying that, as of the date of submission of the joint Notice, such counsel or representative has the authority and consent of the claimants to represent them in the CARP proceeding.

Notices of Intention to Participate are due no later than November 29, 2001. Failure to file a timely Notice of Intention to Participate may preclude a claimant or claimants from participating in a CARP proceeding.

2. Comments on the Existence of Controversies

Before commencing a distribution proceeding or making a partial distribution, the Librarian of Congress must first ascertain whether a controversy exists as to the distribution of the royalty fees and the extent of those controversies. 17 U.S.C. 803(d). Therefore, any comments filed in response to the PBS motion must address the existence and extent of any controversies, at Phase I and Phase II, as

to the distribution of the 2000 satellite fees. For the reasons stated herein, comments on the existence and extent of controversy over the distribution of the 2001 satellite royalty fees are premature and will not be considered at this time.

In Phase I of a satellite royalty distribution, royalties are distributed to certain categories of broadcast programming that has been retransmitted by satellite carriers. The categories have traditionally been syndicated programming and movies, sports, commercial and noncommercial broadcaster-owned programming, religious programming, and music programming. The Office seeks comments as to controversies between these categories for royalty distribution.

In Phase II of a satellite royalty distribution, royalties are distributed to claimants within a program category. If a claimant anticipates a Phase II controversy, the claimant must state each program category in which he or she has an interest that has not, by the end of the comment period, been satisfied through a settlement agreement.

The Copyright Office must be advised of the existence and extent of all Phase I and Phase II controversies by the end of the comment period. It will not consider any controversies that come to our attention after the close of that period.

3. Motion of Public Broadcasting Service for Distribution of PBS National Satellite Feed Royalty Funds for Calendar Years 2000 and 2001

On June 21, 2001, PBS filed a motion for distribution of PBS national satellite feed royalty fees for calendar years 2000 and 2001 and sent a copy of the motion to those entities that have participated in past satellite distribution proceedings. The Office has determined that, as a matter of law, consideration of a distribution of the 2001 satellite royalty fees is premature. A distribution of the 2001 satellite royalty fees cannot occur until those persons who are entitled to a share of the royalties have an opportunity to file their claims with the Copyright Office. Claims to the 2001 satellite royalty fees will not be filed with the Copyright Office until the month of July, 2002. *See* 17 U.S.C. 119(b)(4). Consequently, the Office will consider the motion only so far as it concerns the distribution of the 2000 satellite royalty fees and only after all interested parties have been identified by filing the Notices of Intention requested herein and such parties have had an opportunity to respond to the motion.

A claimant who is not a party to the motion may file a response to the motion no later than the due date set forth in this notice, provided that the respondent files a Notice of Intention to Participate in this proceeding in accordance with this notice. The PBS motion for distribution of PBS national satellite feed royalty funds for 2000–2001 is posted on the Copyright Office Web site (*http://www.loc.gov/copyright/carp/pbsmotion.pdf*) and is available for copying in the Office of the General Counsel. Additional responsive filings are also available for copying in the Office of the General Counsel.

Dated: October 17, 2001.

David O. Carson,

General Counsel.

[FR Doc. 01–27318 Filed 10–29–01; 8:45 am]

BILLING CODE 1410–33–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Federal Council on the Arts and the Humanities Arts and Artifacts Indemnity Panel Advisory Committee; Notice of Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463 as amended) notice is hereby given that a meeting of the Arts and Artifacts Indemnity Panel of the Federal Council on the Arts and the Humanities will be held at 1100 Pennsylvania Avenue NW., Washington, DC 20506, in Room 714, from 9:00 a.m. to 5:00 p.m., on Monday, November 19, 2001.

The purpose of the meeting is to review applications for Certificates of Indemnity submitted to the Federal Council on the Arts and the Humanities for exhibitions beginning after October 1, 2001.

Because the proposed meeting will consider financial and commercial data and because it is important to keep values of objects, methods of transportation and security measures confidential, pursuant to the authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated July 19, 1993, I have determined that the meeting would fall within exemption (4) of 5 U.S.C. 552(b) and that it is essential to close the meeting to protect the free exchange of views and to avoid interference with the operations of the Committee.

It is suggested that those desiring more specific information contact the Advisory Committee Management Officer, Laura S. Nelson, 1100 Pennsylvania Avenue NW., Washington, DC 20506, or call 202/606–8322.

Laura S. Nelson,

Advisory Committee Management Officer.

[FR Doc. 01–27180 Filed 10–29–01; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Combined Arts Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. Law 92–463), as amended, notice is hereby given that four meetings of the Combined Arts Advisory Panel to the National Council on the Arts (Access and Heritage/Preservation categories) will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC, 20506 as follows:

Visual Arts: November 15–16, 2001, Room 716. A portion of this meeting, from 3:30 p.m. to 4:30 p.m. on November 16th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 6:30 p.m. on November 15th and from 9 a.m. to 3:30 p.m. and 4:30 p.m. to 5:30 p.m. on November 16th, will be closed.

Design: November 19–20, 2001, Room 730. A portion of this meeting, from 11 a.m. to 12 p.m. on November 20th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 6 p.m. on November 19th and from 9 a.m. to 11 a.m. and 12 p.m. to 2 p.m. on November 20th, will be closed.

Theater/Musical Theater: November 26–29, 2001, Room 730. A portion of this meeting, from 2 p.m. to 3:30 p.m. on November 28th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9:30 a.m. to 6:30 p.m. on November 26th, from 9:30 a.m. to 7 p.m. on November 27th, from 9:30 a.m. to 2 p.m. and 3:30 p.m. to 6:30 p.m. on November 28th, and from 9:30 a.m. to 2:30 p.m. on November 29th, will be closed.

Multidisciplinary/Presenting: December 3–6, 2001, Room 716. A portion of this meeting, from 2:45 p.m. to 4 p.m. on December 6th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 7 p.m. on December 3rd, from 9 a.m. to 6 p.m. on December 4th and 5th, and from 9 a.m. to 2:45 p.m. and 4 p.m. to 5:30 p.m. on December 6th, will be closed.

The closed portions of these meetings are for the purpose of Panel review,

discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 22, 2001, these sessions will be closed to the public pursuant to (c)(4)(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5691.

Dated: October 24, 2001.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 01–27249 Filed 10–29–01; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506

FOR FURTHER INFORMATION CONTACT: Laura S. Nelson, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* November 6, 2001.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Library and Archival Preservation and Access/Reference Materials, submitted to the Division of Preservation and Access at the July 1, 2001 deadline.

2. *Date:* November 9, 2001.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Library and Archival Preservation and Access/Reference Materials, submitted to the Division of Preservation and Access at the July 1, 2001 deadline.

3. *Date:* November 13, 2001.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Library and Archival Preservation and Access/Reference Materials, submitted to the Division of Preservation and Access at the July 1, 2001 deadline.

4. *Date:* November 27, 2001.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for National Heritage Preservation, submitted to the Division of Preservation and Access at the July 1, 2001 deadline.

5. *Date:* November 30, 2001.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Library and Archival Preservation and Access/Reference Materials, submitted to the Division of Preservation and Access at the July 1, 2001 deadline.

Laura S. Nelson,

Advisory Committee, Management Officer.

[FR Doc. 01–27179 Filed 10–29–01; 8:45 am]

BILLING CODE 7536–01–M

NUCLEAR REGULATORY COMMISSION

Consideration of approval of a Decommissioning Plan for the Kaiser Aluminum and Chemical Corporation Facility in Tulsa, Oklahoma, and an Opportunity for a Hearing

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Consideration of Approval of a Decommissioning Plan for the Kaiser Aluminum and Chemical Corporation Facility in Tulsa, Oklahoma, and an opportunity for a hearing.

The U.S. Nuclear Regulatory Commission (NRC) is considering approval of the Phase 2 Decommissioning Plan (DP) for the Kaiser Aluminum and Chemical Corporation (Kaiser) Facility in Tulsa, Oklahoma. Decommissioning of the Kaiser facility is being conducted in two Phases. In Phase 1, Kaiser remediated the land adjacent to the Kaiser property. In Phase 2, Kaiser will remediate its facility. On May 25, 2001, Kaiser submitted the Phase 2 DP. NRC performed an acceptance review, and on August 7, 2001, notified Kaiser that the information provided in the DP was sufficient to begin a technical review.

Contamination at the Kaiser facility consists of metallic dross/soil containing Th-228, Th-230, and Th-232, generated from smelting and manufacturing processes conducted from 1958 through 1970. The Phase 2 DP identifies the decommissioning activities that will be undertaken to remediate the Kaiser facility and make the site suitable for unrestricted release.

The NRC will require Kaiser to remediate its facility to meet NRC's decommissioning criteria in 10 CFR part 20, subpart E, ''Radiological Criteria for License Termination,'' and during the decommissioning activities, to maintain effluents and doses within NRC requirements, and as low as reasonably achievable.

Prior to approving the DP, NRC will make findings in accordance with the Atomic Energy Act of 1954, as amended, and NRC's regulations. These findings will be documented in a Safety

Evaluation Report and an Environmental Assessment. Approval of the DP will be documented in the public record.

Although Kaiser is no longer a licensee, as a matter of discretion, NRC has decided to treat approval of the DP as a proceeding under subpart L, ''Informal Hearing Procedures for Adjudication in Material Licensing Proceedings,'' of NRC's rules and practice for domestic licensing proceedings in 10 CFR part 2. Discretion is being exercised in this case because of: (1) The unusually large volume of soil to be removed from the site; (2) the significant complexity of this project; and, (3) the close proximity of the site to a major population center. Pursuant to 10 CFR 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with part 2.1205(d). A request for a hearing must be filed within thirty (30) days of the date of publication of this **Federal Register** notice.

Pusuant to 10 CFR 2.1203(b), the request for a hearing must be filed with the Office of the Secretary either:

1. By delivery to the Rulemaking and Adjudications Staff of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738; or

2. By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Rulemaking and Adjudications Staff.

In addition to meeting other applicable requirements of 10 CFR part 2 of NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

1. The interest of the requester in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in part 2.1205(h);

3. The requestor's area of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstances establishing that the request for a hearing is timely in accordance with part 2.1205(d).

In accordance with 10 CFR 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail, to:

1. The applicant, Kaiser Aluminum and Chemical Corporation, Attention: Mr. J. W. Vinzant

2. The NRC staff, by delivery to the General Counsel, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail, addressed to the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

For further details with respect to this action, the Phase 2 DP is available for inspection at the NRC's Public Document Room, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738.

Dated at Rockville, Maryland, this 23rd day of October 2001.

For the Nuclear Regulatory Commission.

Larry W. Camper,

Chief, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 01–27260 Filed 10–29–01; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–9401]

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration on the Pacific Exchange, Inc. (Thermwood Corporation, Common Stock, No Par value)

October 24, 2001.

Thermwood Corporation, an Indiana corporation (''Issuer''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to section 12(d) of the Securities Exchange Act of 1934 (''Act'')[1] and rule 12d2–2(d) thereunder[2] to withdraw its Common Stock, no par value (''Security'') from listing and registration on the Pacific Exchange, Inc. (''PCX'').

The Board of Directors (''Board'') of the Issuer approved a resolution on October 12, 2001 to withdraw its Security from listing on the Exchange. The Board represents that the advantages of being a reporting company under the Act do not offset the cost associated with the SEC's reporting requirements. In addition, the Security is thinly traded and is held by less than 100 shareholders.

The Issuer states in its application that it has met the requirements of the PCX by complying with all applicable laws in effect in the state of Indiana, in which it is incorporated, and with the PCX's rules governing an issuer's voluntary withdrawal of a security from listing and registration. The Issuer's application relates solely to the withdrawal of the Security from the PCX 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]

Any interested person may, on or before November 14, 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 PCX 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.[5]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 01–27306 Filed 10–29–01; 8:45 am]

BILLING CODE 8010–01–M

[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).

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–9401]

Issuer Delisting; Notice of Application To Withdraw From listing and Registration on the American Stock Exchange LLC (Thermwood Corporation, Common Stock No Par Value and 12% Subordinated Debentures (Due 2014))

October 24, 2001.

Thermwood Corporation, an Indiana corporation (''Issuer''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to section 12(d) of the Securities Exchange Act of 1934 (''Act''[1] and rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, no par value, and 12% Subordinated Debentures (due 2014) (''Securities'') from listing and registration on the American Stock Exchange, Inc. (''Amex'').

The Board of Directors (''Board'') of the Issuer approved a resolution on October 12, 2001 to withdraw its Securities from listing on the Exchange. The Board represents that the advantages of being a reporting company under the Act do not offset the cost associated with the SEC's reporting requirements. In addition, the Securities

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

are thinly traded and are held by less than 100 shareholders.

The Issuer states in its application that it has met the requirements of the Amex Rule 18 by complying with all applicable laws in effect in the state of Indiana, 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 withdrawal of the Securities from the Amex and registration under section 12(b) of the Act [3] and shall not affect its obligation to be register under section 12(g) of the Act.[4]

Any interested person may, on or before November 14, 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]

Jonathan G. Katz,

Secretary.

[FR Doc. 01–27307 Filed 10–29–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44973; File No. SR–NASD–2001–74]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to a Change in the Length of the Term of Office of National Adjudicatory Council Members

October 23, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and rule 19b–4 [2] thereunder, notice is hereby given that on October 18, 2001, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly owned subsidiary, NASD Regulation, Inc. (''NASD Regulation'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to Rule 19b–4 under the Act, NASD Regulation is herewith filing a proposed rule change to change the term of office of its National Adjudicatory Council (''NAC'') members from two years to three years.

The text of the proposed rule change appears below. New text is in italics; deletions are in brackets.

* * * * *

By-Laws of NASD Regulation, Inc.

Article V

National Adjudicatory Council

Term of Office

Sec. 5.4

(a) Except as otherwise provided in this Article, each National Adjudicatory Council member shall hold office for a term of [two] *three* years or until a successor is duly appointed and qualified, except in the event of earlier termination from office by reason of death, resignation, removal, disqualification, or other reason.

(b) [In 1998, each National Adjudicatory Council member shall hold office for a term of one year or until a successor is duly appointed and qualified, except in the event of earlier termination from office by reason of death, resignation, removal, disqualification, or other reason.

(c) [Beginning in January [1999] *2002* [and thereafter], the National Adjudicatory Council shall be divided into [two] *three* classes. The term of office of those of the first class shall expire in January [2000] *2003*, [and] the term of office of those of the second class shall expire [one year thereafter] *in January 2004, and the term of office of those of the third class shall expire in January 2005.* Beginning in January [2000] *2003,* members shall be appointed for a term of [two] *three* years to replace those whose terms expire.

[(d]*(c)* Beginning in [2000] *2002,* no member may serve [more than two] consecutive terms, except that if a member is appointed to fill a term of less than one year, such member may serve [up to two consecutive] *a single three year* term[s] following the expiration of such member's initial term.

* * * * *

Article VI

National Adjudicatory Council Regional Nominations for Industry Members

Notice to Chair

Sec. 6.8 [On or before August 1, 1998, the Secretary of NASD Regulation shall send a written notice to the Chair of each Regional Nominating Committee to initiate the process for nominating an individual to represent the region on the National Adjudicatory Council for a term of office of one or two years, as determined by the Board, beginning in 1999.] On or before August 1, 1999, and annually thereafter, the Secretary of NASD Regulation shall send a written notice to the Chair of a Regional Nominating Committee if the term of Office of the National Adjudicatory Council member representing the region shall expire in the next calendar year. The notice shall describe the nomination procedures for filling the office.

* * * * *

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 NASD 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 NASD 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 Association states that the NAC is a balanced committee of the NASD consisting of 14 members—seven industry members and seven non-industry members. Two industry members are at-large, and five are nominated to represent one of the NASD's five geographic regions. All members must be nominated by the NASD's National Nominating Committee and must be appointed by the NASD Regulation Board.

The NAC hears appeals and calls for review of disciplinary matters; acts on

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[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] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

applications in statutory disqualification and membership proceedings; acts on certain disciplinary settlement proposals; exercises exemptive authority; and acts in other proceedings as set forth in the NASD Code of Procedure. The NAC also advises NASD Regulation staff and the Board on enforcement policy and proposed rules relating to the business and sales practices of NASD members and associated persons.

Currently, NAC members serve terms of two years, with no member allowed to serve more than two consecutive two-year terms. In 2000, the outgoing NAC Chair requested staff to consider the feasibility of extending the term of NAC members to three years. During 2001, Association staff solicited input from several District Committees, the NASD Advisory Council (the Chairs of all NASD District Committees and the Market Regulation Committee), and the NAC, all of which favored making the change. Association staff developed a proposal, which was reviewed and supported by the NASD Small Firm Advisory Board. On September 20, 2001, the NASD Board of Governors voted unanimously in favor of the change.

The Association states that the purpose for extending the NAC term from two to three years is to provide for greater continuity and to make better use of the experience and expertise of NAC members with respect to the specialized work of the NAC, particularly industry members. Increasingly, incumbent NAC members eligible for a second consecutive two-year term have not been renominated by their Regional Nominating Committees, thus capping their service on the NAC at two years. The Association staff believes that a three-year term would enable members to make more effective contributions to the work of the NAC, and it would make the term of service of NAC members consistent with the terms of members of NASD District Committees and the NASD Regulation Board. To assure appropriate turnover, NAC members would be restricted from serving consecutive terms.

The Association further states that the transition from two-year to three-year NAC terms will be implemented by the NASD National Nominating Committee and the NASD Regulation Board beginning in January 2002. The current NAC membership will be divided into three classes, as nearly equal in number and as evenly divided between industry and non-industry seats as possible. Class 1 NAC members will serve until January 2003; Class II members will serve until January 2004; and Class III members will serve until January 2005. Commencing in January 2003, newly elected members will assume three-year terms. The Association states that the designation of current NAC members into these three classes is designed to assure an orderly transition by (a) providing appropriate continuity in the composition of the NAC (both industry and non-industry members) during the transition period; and (b) minimizing, to the greatest possible extent, the number of current NAC members whose terms would be reduced by the transition.

(2) Statutory Basis

The Association believes that the proposed rule change is consistent with section 15A(b)(4) [3] of the Act, which requires, among other things, that the Association's rules must be designed to assure a fair representation of its members in the administration of its affairs. The NASD believes that the proposed rule change enhances the Association's ability to assure fair representation on the NAC and the NASD Board of Governors.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Association 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.[4]

III. Date of Effectiveness of the proposed Rule change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act [5] and subparagraph (f)(6) of rule 19b–4 [6] thereunder because it does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate; and the Association gave the Commission written notice of its intention to file the proposed rule change at least five business days before filing. 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.

The Commission notes that under rule 19b–4(f)(6)(iii),[7] the proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. In accordance with rule 19b–4(f)(6)(iii),[8] before the filing date, NASD Regulation submitted written notice of its intent to file the proposed rule change along with a brief description and text of the proposed rule change. In that notice, NASD Regulation requested that the Commission waive the requirement that the rule change, by its terms, not become operative for 30 days after the date of the filing, as consistent with the protection of investors and the public interest. The NASD has stated that the NASD National Nominating Committee will meet on October 26, 2001 to nominate a slate of NAC candidates for appointment by the NASD Regulation Board. The NASD Regulation Board will consider the nominations to the NAC on December 5, 2001. The NASD states that it is thus necessary for the rule change to be both effective and operative on filing in order to meet this timetable.

The Commission finds that accelerating the operative date of the rule change as proposed will aid the NASD in meeting the above timetable for nominations to the NAC and is consistent with the protection of investors and the public interest, and thus designates the date hereof as the operative date.

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

[3] 15 U.S.C. 78*o*–3(b)(4).

[4] This proposed By-Law change was not published for comment by the NASD through its Notice to Members process, but as noted above was endorsed by several NASD District Committees, the NASD Advisory Council, the Small Firm Advisory Board, and the NAC.

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(6).

[7] 17 CFR 240.19b–4(f)(6)(iii).

[8] 17 CFR 240.19b–4(f)(6)(iii).

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 the filing will also be available for inspection and copying at the principal office of the Association. All submissions should refer to File No. SR–NASD–2001–74 and should be submitted by November 20, 2001.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–27308 Filed 10–29–01; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3361]

Commonwealth of Kentucky; (Amendment #1)

In accordance with a notice received from the Federal Emergency Management Agency, dated October 23, 2001, the above numbered Declaration is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to October 22, 2001.

All other information remains the same, *i.e.,* the deadline for filing applications for economic injury is May 16, 2002.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: October 23, 2001.

Herbert L. Mitchell,

Associate Administrator, For Disaster Assistance.

[FR Doc. 01–27209 Filed 10–29–01; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3362]

State of Tennessee; (Amendment #2)

In accordance with a notice received from the Federal Emergency Management Agency, dated October 23, 2001, the above numbered Declaration is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to October 26, 2001.

All other information remains the same, *i.e.,* the deadline for filing applications for economic injury is May 16, 2002.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: October 23, 2001.

Herbert L. Mitchell,

Associate Administrator, For Disaster Assistance.

[FR Doc. 01–27210 Filed 10–29–01; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice #3803]

Advisory Committee on Labor Diplomacy; Notice of Meeting

The Advisory Committee on Labor Diplomacy (ACLD) will hold a meeting from 9:00 a.m. to 1:00 p.m. on November 14, 2001, in room 5533, U.S. Department of State, 2201 C Street, NW., Washington, DC 20520. Committee Chairman Thomas Donahue, former President of the AFL-CIO, will chair the meeting.

The ACLD is comprised of prominent persons with expertise in the area of international labor policy and labor diplomacy. The ACLD advises the Secretary of State and the President on the resources and policies necessary to implement labor diplomacy programs efficiently, effectively and in a manner that ensures U.S. leadership before the international community in promoting the objectives and ideals of U.S. labor policies in the 21st century. The ACLD will make recommendations on how to strengthen the Department of State's ability to respond to the many challenges facing the United States and the federal government in international labor matters. These challenges include the protection of worker rights, the elimination of exploitative child labor, and the prevention of abusive working conditions.

The agenda for the November 14 meeting includes discussion of the interagency process on international labor policy formulation.

Members of the public are welcome to attend the meeting as seating capacity allows. As access to the Department of State is controlled, persons wishing to attend the meeting must be pre-cleared by calling or faxing the following information, by open of business November 13, to Eric Barboriak at (202) 647–3664 or fax (202) 647–0431 or e-mail *barboriakem@state.gov:* name; company or organization affiliation (if any); date of birth; and social security number. Pre-cleared persons should use the C Street entrance to the State Department and have a driver's license with photo, a passport, a U.S. Government ID or other valid photo identification.

Members of the public may, if they wish, submit a brief statement to the Committee in writing. Those wishing further information should contact Mr. Barboriak at the phone and fax numbers provided above.

Dated: October 24, 2001.

Lorne W. Craner,

Assistant Secretary, Bureau of Democracy, Human, Rights and Labor, U.S. Department of State.

[FR Doc. 01–27361 Filed 10–29–01; 8:45 am]

BILLING CODE 4710–18–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2001–10485]

Oily Water Separation Systems

AGENCY: Coast Guard, DOT.

ACTION: Notice; request for comments.

SUMMARY: The Coast Guard has established the Oily Water Separation Systems Task Force to examine a wide range of issues relating to machinery and equipment used to manage oily bilge water on commercial vessels. The task force plans to assess the operational requirements, reliability, and capability of oily water separators in actual operating environments; identify ways to improve the Coast Guard's inspection and evaluation of oily water separation systems; and develop recommendations for the maritime industry on how to reach its environmental goals and ensure compliance with the International Convention for the Prevention of Pollution from Ships (MARPOL) and the Clean Water Act. Your answers to this questionnaire will help the task force gather the necessary information to meet these objectives.

DATES: Comments and related materials must reach the Docket Management Facility on or before December 31, 2001.

ADDRESSES: To make sure your comments and related materials are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility (USCG–2001–10485), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC,

[9] 17 CFR 200.30–3(a)(12).

between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

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

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

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

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice and request for comments, call Ken Olsen, Casualty Analyst/Chief Engineer, Office of Investigation and Analysis, Coast Guard Headquarters, telephone 202–267–1417. If you have questions on viewing or submitting materials to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this Coast Guard study by submitting comments and related materials. You may submit comments anonymously or include your name and address, you must identify the docket number for this notice (USCG–2001–10485), indicate the specific question of the questionaire to which each comment applies, and give the reason for each comment. You may submit your comments and materials by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and materials by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. Your comments are important to this study and will enhance the Coast Guard's understanding of oily water separation systems and bilge water management issues. We will consider all comments received during the comment period.

Background and Purpose

The regulations governing all vessel particulars regarding Oily Water Separators are found in Title 33 Code of Federal Regulations, part 155. Through a mechanical process, an Oily Water Separator (OWS) will remove the oil from water that accumulates in the bilge of a vessel. As the oil is separated from the water, the water can be discharged from the vessel. If the oil content of the water being discharged reaches 15 parts per million (ppm), the OWS will automatically cease discharging the oily water and retain the oily bilge water on board the vessel. In the last few years, the Coast Guard has discovered numerous instances of improper operation of OWS equipment under the authority of 33 CFR 1.07–10. In some cases, oily water separators simply were not used in the discharge of bilge water. In other instances, sensitive monitoring devices were disabled. Also, certain vessels installed bypass piping, and other vessels routinely used the bilge pumping systems to discharge overboard.

In alignment with the Coast Guard's Prevention Through People Initiatives, the task force recognizes that, within the maritime industry, vessel engineers, operators, equipment designers, technicians, and manufacturers can provide significant insight into the operation of OWS equipment and the management of oily bilge water onboard foreign and domestic commercial vessels. To gain that understanding, the task force has developed the following questionnaire for members of the maritime industry to provide comments. The questionnaire is intended to obtain a status of current industry practices. Respondents are also encouraged to disseminate this information and the questionnaire to industry associates.

Questions

We especially need your assistance in answering the following questions. Every question does not need to be answered. Any additional information provided on this topic is welcome. In responding to each question, please explain your reasons for each answer as specifically as possible. You do not need to provide any information identifying you or your organization.

1. Indicate the categories that best describe your function:

Chief or Assistant Engineer.
Unlicensed Vessel Engineer.
Other Vessel Personnel: Captain, Mate, or Crew
Vessel Owner or Operator.
Vessel Manager or Superintendent.
Port Captain or Engineer.
Naval Architect, Marine Engineer, Manufacturer or Consultant.
Other: Please describe

2. Indicate the types of vessels that you have worked on or that you have experience with:

Passenger Vessels.
Cruise Ships.
Cargo Ships.
Tank Ships.
Pushboats or Tugboats.
Offshore Crew or Supply.
Ferries.
Dredges.
Drill Rigs.
Research vessels.
Government Vessels: Navy, Coast Guard, etc.

3. Based on your experience, what types of equipment, components, tanks, and other machinery are used in handling bilge water?

4. What kinds of problems occur in the handling of bilge water?

5. Is the oily water separation (OWS) equipment always used?

6. What other systems are used to discharge bilges?

7. Generally, has your experience shown that OWS and oil content monitoring equipment (PPM sensors and controls) are reliable in actual operating environments?

8. Are redundant OWS systems necessary? If so, why?

9. Have modifications been made to originally installed OWS equipment by the vessel's crew or others to ensure operation? Please explain.

10. On average, do vessel bilge loads (influx of water and contaminates) typically exceed the capacity of the OWS equipment?

11. Are sufficient operating manuals, information, and guidance provided by the vessel operating company or shipboard management?

12. Does your organization have an environmental policy, and is it understood by all employees?

13. How does your organization ensure that environmental equipment, such as OWS equipment, has the proper maintenance, spare parts, and other items necessary to ensure effective operation?

14. What is your organization's policy on reducing and eliminating engine room waste?

15. Does your company employ any additional mechanical measures to reduce or eliminate waste?

16. Has your experience shown that OWS equipment is typically installed in a manner that permits effective operational testing of controls and alarms, and verification of three-way or process control valve operations?

17. Are discharge sample points usually provided, and do methods exist to process contaminated samples during testing?

18. What practices can be shared industry wide to best ensure proper and effective long-term operation of OWS and bilge management equipment?

19. Please provide any additional comments.

You may mail, deliver, fax, or electronically submit your responses to the questionnaire, as well as any concerns, to the addresses listed under the **ADDRESSES** section of this notice.

If you would like to receive a copy of the task force report upon completion, please provide an e-mail or mailing address.

Thank you for participating in this survey.

Dated: October 23, 2001.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 01–27250 Filed 10–29–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of the currently approved collection. The ICR describes the nature of the information collection and the expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection of information was published on July 18, 2001, pages 37514–37515.

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.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: 119—Certification: Air Carrier and Commercial Operator.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0593.

Forms(s): FAA Form 8400–6.

Affected Public: 3,031 FAR part 135 and part 121 operators.

Abstract: This request for clearance reflects requirements necessary under parts 135, 121, and 125 to comply with part 119. The FAA will use the information it collects and reviews to insure compliance and adherence to regulations and, if necessary, take enforcement action on violators of the regulations.

Estimated Annual Burden Hours: 8,856 hours annually.

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.

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 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.

Issued in Washington, DC, on October 24, 2001.

Steve Hopkins,

Manager, Standards and Information Division, APF–100.

[FR Doc. 01–27295 Filed 10–29–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 172: Future Air-Ground Communications in the Very High Frequency (VHF) Aeronautical Data Band (118–137 MHz)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 172 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 172: Future Air-Ground Communications in the VHF Aeronautical Data Band (118–137 MHz).

DATES: The meeting will be held November 13–15, 2001 starting at 9:00 am each day.

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC, 20036.

FOR FURTHER INFORMATION CONTACT: (1) RTCA Secretariat, 1828 L Street, SW., Washington, DC, 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 172 meeting. The agenda will include:

- November 13:
- Opening Plenary Session (Welcome and Introductory Remarks, Review of Agenda, Review Summary of Previous Meeting)
- Form Working Group 2: Begin Review of Minimum Aviation System Performance Standard (MASPS) work to be done
- Form Working Group 3: VHF Data Link 2 Minimum Operational Performance Standard (MOPS) work
- November 14:
- Working Group 3: VHF Data Link 2 MOPS work continues
- November 15:
- Plenary Reconvenes (Review Status of Working Groups 2 and 3: Voice Data Link [VDL] Mode 2 and Mode 3 MOPS)
- Review of Relevant International Activities (AMCP Working Groups, Working Group 47 Status and Issues)
- Report on Digital Activities (NEXCOM, AEEC status, Others as appropriate)
- Closing Plenary Session (Other Business, Date and Place of Next Meeting, Working Group 3 continues as required, Adjourn)

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on October 25, 2001.

Janice L. Peters,

FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 01–27293 Filed 10–29–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA 2001–10120]

Agency Information Collection Activities; Announcement of OMB Approval; Major Capital Investment Projects

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Transit Administration (FTA) is announcing that the collection of information required under 49 CFR part 611, Major Capital Investment Projects, has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: John Day, Office of Policy Development (TBP–10), Federal Transit Administration, 400 7th Street SW., Washington, DC 20590, (202) 366–1671.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 16, 2001 (66 FR 37088), FTA announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 2132–0561. The approval expires on August 31, 2004.

Issued: October 23, 2001.

Jennifer L. Dorn,

Administrator.

[FR Doc. 01–27272 Filed 10–29–01; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No: MARAD–2001–10903]

Commercial War Risk Hull and Protection and Indemnity Insurance on Title XI Mortgaged Vessels Operated Exclusively on the Inland Rivers and Intercoastal Waterways of the United States and on the Great Lakes

AGENCY: Maritime Administration, Transportation.

ACTION: Policy Review with request for comments.

DATES: Interested parties are requested to submit comments on or before November 13, 2001.

FOR FURTHER INFORMATION CONTACT: Edmond J. Fitzgerald, U.S. Department of Transportation, Maritime Administration, Director, Office of Insurance and Shipping Analysis, Telephone (202) 366–2400, Room 8117, 400 Seventh Street, SW., Washington, DC 20590.

Comments regarding this policy review should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. {Due to current U.S. Postal Service (U.S.P.S.) delivery problems in Washington, DC, commenters are urged to use one of the following: mail via non-U.S.P.S. delivery service (e.g. FedEx, UPS, DHL etc.); or fax their comment to MARAD at 202/366–9206; or use electronic filing as explained below}. Comments may also be submitted by electronic means via the Internet at *http://dmses.dot.gov/submit*. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. EST, Monday through Friday, except Federal holidays. An electronic version of this document is available on the World Wide Web at *http://dms.dot.gov*.

SUPPLEMENTARY INFORMATION: Some experts are predicting a possible marine threat, either as a means or as a target or both, if another terrorist attack were to occur against the U.S. In light of this and the September 11th events, the Maritime Administration (MARAD, we, our, or us) believes it should revisit the existing inland/Great Lakes war risk insurance waiver policy and requests public comment on whether we should change our current waiver policy. We have the authority to rescind or revise the existing waiver policy and to impose the full war risk cover on all Title XI vessels if we determine that it is now necessary.

Currently, we waive the Security Agreement requirement for commercial war risk hull and Protection and Indemnity insurance on Title XI mortgaged vessels, which are operated exclusively on the inland rivers and intercoastal waterways of the United States and on the Great Lakes. This policy was approved by the Assistant Secretary of Commerce for Maritime Affairs on June 30, 1971, and has remained in effect ever since. Most Title XI companies operating exclusively inland or on the Great Lakes have taken advantage of this waiver. MARAD estimates that approximately 20 companies with over 500 vessels (including a large number of inland barges) are not insured for war risks.

The standard war risk insurance policy covers a number of non-marine perils risks, including warlike operations, strikes, civil unrest and acts of terrorism. The basic underlying assumption for the war risk waiver for inland/Great Lakes was that the threat of attack within the continental 48 states or Great Lakes was very slight. Events of September 11, 2001, have called this basic assumption into question.

As a consequence, we may begin to require that some or all of the inland Title XI vessels have war risk cover. We may not require war risk cover for all inland Title XI vessels because significant groups or fleets of inland barges are widely dispersed on the inland waters at any point in time. This wide distribution limits our inland/Great Lakes Title XI exposure. Therefore, the risk of a significant loss from any one event or target may be relatively small.

Dated: October 25, 2001.

By Order of the Acting Deputy Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 01–27276 Filed 10–29–01; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–511 (Sub–No. 2X)]

Central Railroad Company of Indianapolis—Discontinuance Exemption—in Grant County, IN

On October 10, 2001, the Central Railroad Company of Indianapolis (CERA) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to discontinue service over a 5.22-mile line of railroad, known as the Marion Branch, between milepost TS–152.22, near Marion, and milepost TS–157.44, near West Marion Belt, in Grant County, IN.[1] The discontinuance includes 0.3 miles of trackage rights over Pennsylvania Lines LLC (PL) between PL milepost MP–78.3 and milepost MP–78.6.[2] The line traverses U.S. Postal Service Zip Codes 46952 and 46953. It

[1] The line is owned by Norfolk Southern Railway Company (NSR) and was operated under lease by CERA. NSR will replace CERA and provide service on the line.

[2] The PL mileposts equate to NSR mileposts TS–153.1 and TS–153.4, respectively.

includes the station of Marion at milepost TS–152.22.

The line does not contain federally granted rights-of-way. Any documentation in CERA's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by January 28, 2002.

Any offer of financial assistance to subsidize continued rail service under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each offer must be accompanied by a $1,000 filing fee. See 49 CFR 1002.2(f)(25).

This proceeding is exempt from environmental reporting requirements under 49 CFR 1105.6(c) and from historic reporting requirements under section 1105.8(b).

All filings in response to this notice must refer to STB Docket No. AB–511 (Sub-No. 2X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001; and (2) Louis E. Gitomer, Ball Janik LLP, 1455 F Street, NW., Suite 225, Washington, DC 20005. Replies are due November 19, 2001.

Persons seeking further information concerning discontinuance procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1552. [TDD for the hearing impaired is available at 1–800–877–8339.]

Board decisions and notices are available on our web site at *www.stb.dot.gov.*

Decided: October 24, 2001.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 01–27254 Filed 10–29–01; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 22, 2001.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the **Paperwork Reduction Act of 1995, Public Law 104–13.** Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before November 29, 2001 to be assured of consideration.

Departmental Offices/Office of Community Adjustment and Investment Programs

OMB Number: 1505–0181.

Form Number: None.

Type of Review: Reinstatement.

Title: Community Adjustment and Investment Program Grant Program Application.

Description: The Department of the Treasury (Treasury), as Chair of the inter-agency committee established by Executive Order No, 12916, dated May 13, 1994, is sponsoring the North American Development Bank's (NADBank) collection of application information from applicants for United States Community Adjustment and Investment Program (USCAIP) grant funds. Respondents will be State and Local Governments, Institutions of Higher Education, and Non-Profit Organizations. NADBank disburses USCAIP grants using monies transferred from Treasury. The information collected will be used to review and selected projects for NADBank USCAIP grants.

Respondents: Not-for-profit institutions, State, Local or Tribal Government.

Estimated Number of Respondents: 150.

Estimated Burden Hours Per Respondent: 20 hours.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 3,000 hours.

Clearance Officer: Lois K. Holland, (202) 622–1563, Departmental Offices, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 01–27269 Filed 10–29–01; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 19, 2001.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the **Paperwork Reduction Act of 1995, Public Law 104–13.** Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before November 29, 2001 to be assured of consideration.

Customs Service (CUS)

OMB Number: New.

Form Number: Customs Form 442.

Type of Review: New collection.

Title: Application for Exemption from Special Landing Requirements Overflight (Southern Border Only); and General Aviation Telephonic Entry (GATE) (Northern Border Only).

Description: This collection is an application for exemption from special landing requirements (Overflight) and General Aviation Telephonic Entry (GATE) will e used required by private flyers to participate in Customs designated privilege program which provides a waiver for landing requirements and normal Customs processing along the Southern Border, or provides clearance telephonically when pilots report their international arrivals from Canada.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions.

Estimated Number of Respondents: 5,500.

Estimated Burden Hours Per Respondent: 2 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 218 hours.

Clearance Officer: Tracey Denning, (202) 927–1429, U.S. Customs Service,

Information Services Branch, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW., Room 3.2.C, Washington, DC 20229.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 01–27270 Filed 10–29–01; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 23, 2001.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the **Paperwork Reduction Act of 1995, Public Law 104–13.** Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before November 29, 2001 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1349.

Form Number: None.

Type of Review: Extension.

Title: Cognitive and Psychological Research.

Description: The proposed research will improve the quality of the data collection by examining the psychological and cognitive aspects of methods and procedures such as: interviewing processes, forms redesign, survey and tax collection technology and operating procedures (internal and external in nature).

Respondents: Individuals or households, Business or other for-profit.

Estimated Number of Respondents: 30,000.

Estimated Burden Hours Per Respondent: 35 minutes.

Frequency of Response: Other (one-time only).

Estimated Total Reporting Burden: 17,500 hours.

OMB Number: 1545–1351.

Form Number: None.

Type of Review: Extension.

Title: Statistics of Income (SOI) Corporate Survey.

Description: This is a request to conduct a yearly survey on a small portion of the very largest U.S. corporations. The data will be used to improve the quality of the Statistics of Income's (SOI) advance tax data. The survey will allow SOI to collect existing tax information earlier than regular IRS processing currently allows. Advance tax data has been requested by the Bureau of Economic Analysis, the Office of Tax Analysis, the Office of Tax Analysis and the Joint Committee on Taxation for tax analysis purposes.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 175.

Estimated Burden Hours Per Respondent: 30 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 88 hours.

OMB Number: 1545–1462.

Regulation Project Number: PS–268–82 Final.

Type of Review: Extension.

Title: Definitions Under Subchapter S of the Internal Revenue Code.

Description: The regulations provide definitions and special rules under Code section 1377 which affect S corporations and their shareholders.

Respondents: Business or other for-profit, Individuals or households.

Estimated Number of Respondents: 4,000.

Estimated Burden Hours Per Respondent: 15 minutes.

Frequency of Response: On occasion, Other (once).

Estimated Total Reporting Burden: 1,000 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 01–27271 Filed 10–29–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0474]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before November 29, 2001.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0474.''

SUPPLEMENTARY INFORMATION:

Title: A Computer Generated Funding Fee Receipt (formerly VA Form 26–8986 and 26–8986–1).

OMB Control Number: 2900–0474.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: A funding fee must be paid to VA before a loan can be guaranteed. The funding fee is payable on all guaranteed loans, i.e., Assumptions, Manufactured Housing, Refinances, and Real Estate purchases and construction loans. The funding fee is not required from veterans in receipt of compensation for service connected disability. Loans made to the unmarried surviving spouses of veterans (who died in service or from a service connected disability) are exempt from payment of the funding fee, regardless of whether the spouse has his/her own eligibility, provided that the spouse has not used his/her eligibility to obtain a VA guaranteed loan. For a loan to be eligible for guaranty, lenders must provide a copy of the Funding Fee Receipt or evidence the veteran is exempt from the requirement of paying the funding fee. The receipt is computer generated and

mailed to the lender ID number address that was entered into a Automated Clearing House service.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on August 7, 2001, at page 41311.

Affected Public: Individuals or households and business or other for-profit.

Estimated Annual Burden: 6,667 hours.

Estimated Average Burden Per Respondent: 2 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 200,000.

Send comments and recommendations concerning any aspect of the information collection to VA's Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0474'' in any correspondence.

Dated: October 10, 2001.

By direction of the Secretary.

Barbara H. Epps,

Management Analyst, Information Management Service.

[FR Doc. 01–27299 Filed 10–29–01; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0041]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before November 29, 2001.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0041.''

SUPPLEMENTARY INFORMATION:

Title: Compliance Inspection Report, VA Form 26–1839.

OMB Control Number: 2900–0041.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used by fee compliance inspectors to report acceptability of residential construction and conformity with standards prescribed for new housing proposed as security for loans guaranteed. The information is used by VA to determine whether completion of all onsite and offsite improvements are completed in accordance with plans and specifications used in the appraisal of the property.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on August 7, 2001, at pages 41311 and 41312.

Affected Public: Individuals or households.

Estimated Annual Burden: 1 hour is being requested since the compliance inspection report is common to the industry.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 31,500.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0041'' in any correspondence.

Dated: October 10, 2001.

By direction of the Secretary.

Barbara H. Epps,

Management Analyst, Information Management Service.

[FR Doc. 01–27297 Filed 10–29–01; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0045]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before November 29, 2001.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0045.''

SUPPLEMENTARY INFORMATION:

Title: Request for Determination of Reasonable Value (Real Estate), VA Form 26–1805.

OMB Control Number: 2900–0045.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 26–1805 is used to collect data necessary for VA compliance with requirements of Title 38, U.S.C., 3710 (b)(4), (5), and (6). These requirements prohibit the VA guaranty or making of any loans unless the suitability of the security property for dwelling purposes is determined; the loan amount does not exceed the reasonable value; and if the loan is for purposes of alteration, repair, or improvements, the work substantially improves the basic livability of the property. The data supplied by persons and firms completing VA Form 26–1805 is used by VA personnel to identify and locate properties for appraisal and to make assignments to appraisers. VA is required to notify potential veteran-purchasers of such properties of the VA-established reasonable value. VA will also use VA Form 26–1843, Certificate of Reasonable Value, (included in the VA Form 1805 Package) as a notice to requesters of the reasonable (appraised)

value or an authorized lender will issue a notice of value in connection with the Lender Appraisal Processing Program.

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 **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on August 7, 2001, on page 41312.

Affected Public: Individuals or households.

Estimated Annual Burden: 60,000 hours.

Estimated Average Burden Per Respondent: 12 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 300,000.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0045'' in any correspondence.

Dated: October 10, 2001.

By direction of the Secretary.

Barbara H. Epps,

Management Analyst, Information Management Service.

[FR Doc. 01–27298 Filed 10–29–01; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0059]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before November 29, 2001.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981 or e-mail denise.mclamb@mail.va.gov. Please refer to ''OMB Control No. 2900–0059.''

SUPPLEMENTARY INFORMATION:

Title: Statement of Person Claiming to Have Stood in Relation of a Parent, VA Form 21–524.

OMB Control Number: 2900–0059.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: The form is used to secure information about the relationship of the claimant to the veteran from those claiming compensation as parents of veterans.

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 **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on August 14, 2001 at pages 42706–42707.

Affected Public: Individuals or households.

Estimated Annual Burden: 4,000 hours.

Estimated Average Burden Per Respondent: 2 hours.

Frequency of Response: One-time.

Estimated Number of Respondents: 2,000.

Send comments and recommendations concerning any aspect of the information collection to VA's Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to ''OMB Control No. 2900–0059'' in any correspondence.

Dated: October 16, 2001.

By direction of the Secretary.

Barbara H. Epps,

Management Analyst, Information Management Service.

[FR Doc. 01–27300 Filed 10–29–01; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0510]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATE: Comments must be submitted on or before November 29, 2001.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0510.''

SUPPLEMENTALRY INFORMATION:

Title: Application for Exclusion of Children's Income, VA Form 21–0571.

OMB Control Number: 2900–0510.

Type of Review: Extension of a currently approved collection.

Abstract: A veteran's or surviving spouse's rate of Improved Pension is determined by family income. Normally, income of children who are members of the household is included in this determination. However, children's income may be excluded if it is unavailable or if consideration of that income would cause hardship. The information collected is used by VA to determine whether children's income can be excluded from consideration in determining a parent's eligibility for non-service-connected pension.

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 **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on August 14, 2001, at page 42709.

Affected Public: Individuals or households.

Estimated Annual Burden: 18,750 hours.

Estimated Average Burden Per Respondent: 45 minutes.

Frequency of Response: On time.

Estimated Number of Respondents: 25,000.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235,

Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0510'' in any correspondence.

Dated: October 16, 2001.
By direction of the Secretary.

Barbara H. Epps,

Management Analyst, Information Management Service.

[FR Doc. 01–27301 Filed 10–29–01; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0114]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before November 29, 2001.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0114.''

SUPPLEMENTARY INFORMATION:

Title: Statement of Marital Relationship, VA Form 21–4170.

OMB Control Number: 2900–0114.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–4170 is used to develop the evidence to determine a claimed common law marriage can be recognized by VA. Without this information, VA would have no means of determining the proper marital status of the veteran.

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 **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on August 14, 2001, at pages 42707–42708.

Affected Public: Individuals or households.

Estimated Annual Burden: 3,000 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 6,000.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0114'' in any correspondence.

Dated: October 16, 2001.
By direction of the Secretary:

Barbara H. Epps,

Management Analyst, Information Management Service.

[FR Doc. 01–27302 Filed 10–29–01; 8:45 am]

BILLING CODE 2320–01–M

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0355]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before November 29, 2001.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8015, FAX (202) 273–5981 or *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0355.''

SUPPLEMENTARY INFORMATION:

Title: Verification of Pursuit of Course (Leading to a Standard College Degree Under Chapters 32, 34, and 35, Title 38, U.S.C., and Section 903 of Public Law 96–342), VA Form 22–6553.

OMB Control Number: 2900–0355.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 22–6553 is used to verify continued enrollment or report changes in enrollment status for students receiving educational benefits in pursuit of a college course. Schools are required to report, without delay to VA, when a student fails to enroll, has interrupted, terminated a program, has unsatisfactory progress or conduct. VA uses the information from the current collection to ensure that schools promptly report changes in training and if a student's education benefits are to be continued unchanged, increased, decreased, or terminated. Without this information, VA might underpay or overpay benefits.

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 **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on July 11, 2001, at page 36366.

Affected Public: State, local or tribal government and not-for-profit institutions.

Estimated Annual Burden: 9,333 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Frequency of Response: The frequency of responses for each educational institution will vary according to the number of students who receive VA education benefits at that school. VA estimates an annual average of 10 responses per educational institution.

Estimated Number of Respondents: The number of respondents is arrived at based on the average number of educational institutions using VA Form 22–6553 which had veterans or eligible persons enrolled during the last 12 months, and a projected number of trainees. VA currently has an average of 5,600 active educational institutions (colleges, universities, or other institutions of higher learning).

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0355'' in any correspondence.

Dated: October 16, 2001.

By direction of the Secretary:

Barbara H. Epps,

Management Analyst, Information Management Service.

[FR Doc. 01–27303 Filed 10–29–01; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0089]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before November 29, 2001.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981 or e-mail *denise.mclamb@mail.va.gov*. Please refer to ''OMB Control No. 2900–0089.''

SUPPLEMENTARY INFORMATION

Title: Statement of Dependency of Parent(s), VA Form 21–509.

OMB Control Number: 2900–0089.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–509 is used to gather income and dependency information from applicants who are seeking payment of benefits as or for a dependent parent. The information is necessary to determine dependency of the parent.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on August 14, 2001 at page 42707.

Affected Public: Individuals or households.

Estimated Annual Burden: 20,000 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: Generally one time.

Estimated Number of Respondents: 40,000.

Send comments and recommendations concerning any aspect of the information collection to VA's Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0089'' in any correspondence.

Dated: October 16, 2001.

By direction of the Secretary:

Barbara H. Epps,

Management Analyst, Information Management Service.

[FR Doc. 01–27304 Filed 10–29–01; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Tuesday,
October 30, 2001

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Review of Plant and Animal Species That Are Candidates or Proposed for Listing as Endangered or Threatened, Annual Notice of Findings on Recycled Petitions, and Annual Description of Progress on Listing Actions; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Review of Plant and Animal Species That Are Candidates or Proposed for Listing as Endangered or Threatened, Annual Notice of Findings on Recycled Petitions, and Annual Description of Progress on Listing Actions

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of review of species which are candidates or proposed for listing, findings on recycled petitions, and progress on listing actions.

SUMMARY: In this notice of review, we, the U.S. Fish and Wildlife Service (Service), present an updated list of plant and animal species native to the United States that we regard as candidates or have proposed for addition to the Lists of Endangered and Threatened Wildlife and Plants under the Endangered Species Act of 1973, as amended. Identification of candidate species can assist environmental planning efforts by providing advance notice of potential listings, allowing resource managers to alleviate threats and thereby possibly remove the need to list species as endangered or threatened. Even if we subsequently list a candidate species, the early notice provided here could result in fewer restrictions on activities by prompting candidate conservation measures to alleviate threats to the species.

We request additional status information that may be available for the identified candidate species and information on species that we should include as candidates in future updates of this list. We will consider this information in preparing listing documents and future revisions to the notice of review. This information will help us in monitoring changes in the status of candidate species and in conserving candidate species.

We announce the availability of listing priority assignment forms for candidate species. These documents describe the status and threats that we evaluated in order to assign a listing priority number to each species. We also announce our findings on recycled petitions and describe our progress in revising the Lists of Endangered and Threatened Wildlife and Plants during the period January 8, 2001, to October 17, 2001.

DATES: We will accept comments on the candidate notice of review at any time.

ADDRESSES: Submit your comments regarding a particular species to the Regional Director of the Region identified in **SUPPLEMENTARY INFORMATION** as having the lead responsibility for that species. You may submit comments of a more general nature to the Chief, Division of Conservation and Classification, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 420, Arlington, VA 22203 (703/358–2171). Written comments and materials received in response to this notice of review will be available for public inspection by appointment at the appropriate Regional Office listed in **SUPPLEMENTARY INFORMATION.**

Information regarding the range, status, and habitat needs of and listing priority assignment for a particular species is available for review at the appropriate Regional Office listed below in **SUPPLEMENTARY INFORMATION,** at the Division of Conservation and Classification, Arlington, Virginia (see address above), or on our Web site *(http://www.fws.gov).*

FOR FURTHER INFORMATION CONTACT: The Endangered Species Coordinator(s) in the appropriate Regional Office(s) or Chris Nolin, Chief, Division of Conservation and Classification (703/358–2171).

SUPPLEMENTARY INFORMATION:

Candidate Notice of Review

Background

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires that we identify species of wildlife and plants that are endangered or threatened, based on the best available scientific and commercial information. Through the Federal rulemaking process, we add these species to the List of Endangered and Threatened Wildlife at 50 CFR 17.11 or the List of Endangered or Threatened Plants at 50 CFR 17.12. As part of this program, we maintain a list of species that we regard as candidates for listing. A candidate is one for which we have on file sufficient information on biological vulnerability and threats to support a proposal to list as endangered or threatened but for which preparation and publication of a proposal is precluded by higher-priority listing actions. We maintain this list for a variety of reasons, including: to notify the public that these species are facing threat to their survival; to provide advance knowledge of potential listings that could affect decisions of environmental planners and developers; to solicit input from interested parties to identify those candidate species that may not require protection under the Act or additional species that may require the Act's protections; and to solicit information needed to prioritize the order in which we will propose species for listing.

Table 1 of this notice includes 252 species that we regard as candidates for addition to the Lists of Endangered and Threatened Wildlife and Plants (Lists), as well as 35 species for which we have published proposed rules to list as threatened or endangered species, most of which we identified as candidates in the October 25, 1999, Candidate Notice of Review (64 FR 57534). We encourage consideration of these species in environmental planning, such as in environmental impact analysis under the National Environmental Policy Act of 1969 (implemented at 40 CFR parts 1500–1508) and in local and statewide land use planning. Table 2 of this notice contains 74 species we identified as candidates or as proposed species in the October 25, 1999, Candidate Notice of Review that we now no longer consider candidates. This includes 21 species that we removed from candidate status (including 8 species we are removing from candidate status through this notice) and 53 species we listed as threatened or endangered since October 25, 1999. The Regional Offices identified as having lead responsibility for the particular species will continually revise and update the information on candidate species. We intend to publish an updated combined notice of review for animals and plants, that will include our findings on recycled petitions and a description of our progress on listing actions, annually in the **Federal Register**.

Previous Notices of Review

The Act directed the Secretary of the Smithsonian Institution to prepare a report on endangered and threatened plant species, which was published as House Document No. 94–51. We published a notice in the **Federal Register** on July 1, 1975 (40 FR 27823), in which we announced that we would review more than 3,000 native plant species named in the Smithsonian's report and other species added by the 1975 notice for possible addition to the List of Endangered and Threatened Plants. A new comprehensive notice of review for native plants, which took into account the earlier Smithsonian report and other accumulated information, superseded the 1975 notice on December 15, 1980 (45 FR 82479). On November 28, 1983 (48 FR 53640), a supplemental plant notice of review

noted changes in the status of various species. We published complete updates of the plant notice on September 27, 1985 (50 FR 39526), February 21, 1990 (55 FR 6184), September 30, 1993 (58 FR 51144), and, as part of combined animal and plant notices, on February 28, 1996 (61 FR 7596), September 19, 1997 (62 FR 49398), and October 25, 1999 (64 FR 57534). On January 8, 2001 (66 FR 1295), we published our recycled petition finding for one plant species that had outstanding warranted but precluded findings.

Previous animal notices of review included a number of the animal species in the accompanying Table 1. We published earlier comprehensive reviews for vertebrate animals in the **Federal Register** on December 30, 1982 (47 FR 58454), and on September 18, 1985 (50 FR 37958). We published an initial comprehensive review for invertebrate animals on May 22, 1984 (49 FR 21664). We published a combined animal notice of review on January 6, 1989 (54 FR 554), and with minor corrections on August 10, 1989 (54 FR 32833). We again published comprehensive animal notices on November 21, 1991 (56 FR 58804), November 15, 1994 (59 FR 58982), and, as part of combined animal and plant notices, on February 28, 1996 (61 FR 7596), September 19, 1997 (62 FR 49398), and October 25, 1999 (64 FR 57534). On January 8, 2001 (66 FR 1295), we published our recycled petition findings for 25 animal species that had outstanding warranted but precluded findings as well as notice of 1 candidate removal. This revised notice supersedes all previous animal, plant, and combined notices of review.

Current Notice of Review

We gather data on plants and animals native to the United States that appear to merit consideration for addition to the Lists of Endangered and Threatened Wildlife and Plants. This notice identifies those species (including, by definition, biological species; subspecies of fish, wildlife, or plants; and distinct population segments (DPS) of vertebrate animals) that we currently regard as candidates for addition to the Lists. In issuing this compilation, we rely on information from status surveys conducted for candidate assessment and on information from State Natural Heritage Programs, other State and Federal agencies (such as the Forest Service and the Bureau of Land Management), knowledgeable scientists, public and private natural resource interests, and comments received in response to previous notices of review.

Tables 1 and 2 are arranged alphabetically by names of genera, species, and relevant subspecies and varieties under the major group headings for animals first, then plants. Animals are grouped by class or order. Plants are subdivided into three groups: flowering plants, conifers and cycads, and ferns and their allies. Useful synonyms and subgeneric scientific names appear in parentheses (the synonyms preceded by an equals sign). Several species that have not yet been formally described in the scientific literature are included; such species are identified by a generic or specific name (in italics) followed by ''sp.'' or ''ssp.'' We incorporate standardized common names in these notices as they become available. We sorted plants by scientific name due to the inconsistencies in common names, the inclusion of vernacular and composite subspecific names, and the fact that many plants still lack a standardized name.

Table 1 lists all species that we regard as candidates for listing and all species proposed for listing under the Act. Candidate species are those species for which we have on file sufficient information on biological vulnerability and threats to support issuance of a proposed rule to list, but issuance of the proposed rule is precluded by other higher priority listing actions. We emphasize that we are not proposing these candidate species for listing by this notice, but we anticipate developing and publishing proposed listing rules for these species in the future. We encourage State agencies, other Federal agencies, and other parties to give consideration to these species in environmental planning. Proposed species are those species for which we have published a proposed rule to list as endangered or threatened in the **Federal Register** (exclusive of species for which we have withdrawn or finalized the proposed rule).

Species in Table 1 of this notice are assigned to several status categories, noted in the ''Category'' column at the left side of the table. We explain the codes for the category status column of species in Table 1 below:

PE—Species proposed for listing as endangered.

PT—Species proposed for listing as threatened.

C—Candidates: Species for which we have on file sufficient information on biological vulnerability and threats to support proposals to list them as endangered or threatened. Issuance of proposed rules for these species is precluded at present by other higher priority listing actions. This category includes species for which we made a ''warranted but precluded'' 12-month finding on a petition to list. We made new findings on all petitions for which we previously made ''warranted but precluded'' findings. We identify the species for which we made a continued ''warranted but precluded'' finding on a recycled petition by the code ''C*'' in the category column (see Findings on Recycled Petitions section for additional information). We anticipate developing and publishing proposed rules for candidate species in the future. We encourage State and other Federal agencies as well as other parties to give consideration to these species in environmental planning.

The column labeled ''Priority'' indicates the listing priority number for each candidate species that we use to determine the most appropriate use of our available resources. We assign this number based on the immediacy and magnitude of threats as well as on taxonomic status. We published a complete description of our listing priority system in the **Federal Register** on September 21, 1983 (48 FR 43098).

The third column identifies the Regional Office to which you should direct comments or questions (see **ADDRESSES** section). We provided the comments received in response to the 1999 notice of review to the Region having lead responsibility for each candidate species mentioned in the comment. We will likewise consider all information provided in response to this notice of review in deciding whether to propose species for listing and when to undertake necessary listing actions. Comments received will become part of the administrative record for the species.

Following the common name (fourth column) is the scientific name (fifth column) and the family designation (sixth column). The seventh column provides the known historical range for the species or vertebrate population, indicated by postal code abbreviations for States and U.S. territories (many species no longer occur in all of the areas listed).

Species in Table 2 of this notice are species we included either as proposed species or as candidates in the 1999 notice of review but have since removed from such status for a variety of reasons. We added many of the species identified as proposed in the last notice of review to the Lists of Endangered and Threatened Wildlife and Plants. Table 2 also includes species that became candidates or were proposed for listing since the 1999 notice of review and are no longer classified as either candidates or proposed species (for example candidates or proposed species that we listed or withdrew since the 1999 notice of review). The first column indicates the present status of the species, using the following codes:

E—Species we listed as endangered.
T—Species we listed as threatened.
Rc—Species we removed from the candidate list because currently available information does not support issuance of a proposed listing.
Rp—Species we removed from the candidate list because we have withdrawn the proposed listing.

The second column provides a coded explanation of why we no longer regard the species as a candidate or proposed species. Descriptions of the codes are as follows:

A—Species that are more abundant or widespread than previously believed and species that are not subject to the degree of threats sufficient to warrant continuance of candidate status, issuance of a proposed listing, or a final listing. The reduction in threats could be due, in part, or all, to actions taken under a conservation agreement.
F—Species whose range is no longer a U.S. Territory.
I—Species for which we have insufficient information on biological vulnerability and threats to support issuance of a proposed rule to list.
L—Species we added to the Lists of Endangered or Threatened Wildlife and Plants.
M—Species we mistakenly included as candidates or proposed species in the last notice of review.
N—Species that are not a listable entity (do not meet the Act's definition of ''species'') based on current taxonomic understanding.
X—Species we believe to be extinct.

The columns describing lead region, scientific name, family, common name, and historic range include information as previously described for Table 1.

Summary

Since publication of the 1999 notice of review, we reviewed the available information on candidate species to ensure that issuance of a proposed listing is justified for each species and to reevaluate the relative listing priority assignment of each species. We undertook this effort to ensure we focus conservation efforts on those species at greatest risk. As of October 17, 2001, 9 plants and 19 animals are proposed for endangered status; 2 plants and 5 animals are proposed for threatened status; and 139 plant and 113 animal candidates are awaiting preparation of proposed rules (see Table 1). Table 2 includes 74 species that we classified as either proposed for listing or candidates that we no longer classify in those categories.

Summary of New Candidates

Below we present brief summaries of new candidates. Complete information, including references, are found in the candidate forms. You may obtain a copy of these forms from the Regional office that has the lead for the species or from our Website (*http://endangered.fws.gov*).

Mammals

Island fox (*Urocyon littoralis catalinae, U. l. santacruzae, U. l. littoralis, and U. l. santarosae*)—The Santa Catalina Island fox, Santa Cruz Island fox, San Miguel Island fox, and Santa Rosa Island fox numbers have declined drastically in the last 4 years. Total island fox numbers have fallen from approximately 6,000 individuals to less than 2,000 in the last 4 years. Island fox populations on San Miguel and Santa Cruz islands declined by an estimated 80 to 90 percent, and, based on studies conducted as recently as 1999, the island fox has a 50 percent chance of extinction over the next 5 to 10 years. Long-term island fox population monitoring has not been undertaken on Santa Rosa Island; however, anecdotal observations and limited trapping efforts strongly suggest that a similar decline has occurred for this population as well. The primary causes of the decline of these island fox subspecies are the degradation of habitat by introduced herbivores, the increased predation by golden eagles, the rapid transmission of canine distemper through the Santa Catalina subspecies, and the lack of regulation to address the threats. Based on imminent threats of a high magnitude, we assigned these island fox subspecies a listing priority number of 3.

Mazama pocket gopher (*Thomomys mazama*—all subspecies)—The Mazama pocket gopher is strongly associated with glacial outwash prairies in western Washington. The prairie of South Puget Sound is one of the rarest habitats in the United States. We assessed the current distribution of the Mazama pocket gopher and found that many of the historic populations have disappeared or diminished substantially enough in size that their presence was not obvious. Because the remaining populations tend to be small and isolated and the pocket gophers have a limited ability to disperse, further isolation could cause their eventual extinction. Threats include urbanization, loss of basic ecological processes such as fire, nonnative vegetation, domestic cat predation, and lack of regulation to protect the habitat. Because these threats are high but non-imminent, we assigned a listing priority number of 6 to this subspecies.

Southern Idaho ground squirrel (*Spermophilus brunneus endemicus*)—During the past 30 years, a dramatic population decline of the southern Idaho ground squirrel has occurred. We now believe that the southern Idaho ground squirrel occupies approximately 44 percent of its historical range. Surveys indicate a precipitous decline in squirrel population since the mid-1980s. A 1999 survey of 145 of the 180 known historical population sites indicated that only 53 sites (37 percent) were still occupied. Furthermore, 52 of the 53 occupied sites had what biologists characterized as ''remarkably low levels of activity''. Scientists attribute the decline to the following factors: invasive nonnative plants associated with a change in fire frequency, and lack of reclamation or restoration of habitat by various land management agencies and private landowners; and an increase in the risk of extinction due to a reduced distribution. Based on our evaluation that these threats pose an imminent risk of a high magnitude, this subspecies warrants a listing priority number of 3.

Birds

Yellow-billed cuckoo, western continental U.S. DPS (*Coccyzus americanus*)—While the cuckoo is still relatively common east of the crest of the Rocky Mountains, biologists estimate that more than 90 percent of the bird's riparian (streamside) habitat in the West has been lost or degraded. These modifications, and the resulting decline in the distribution and abundance of yellow-billed cuckoos throughout the western states, is believed to be due to conversion to agriculture; grazing; competition from nonnative plants, such as tamarisk; river management, including altered flow and sediment regime; and flood control practices, such as channelization and bank protection. Based on non-imminent threats of a high magnitude, we assigned a listing priority number of 6 to this DPS of yellow-billed cuckoo.

Streaked horned lark (*Eremophila alpestris strigata*)—The streaked horned lark is considered rare. Currently, we estimate that fewer than 200 breeding pairs remain in Oregon. In Washington, it has been extirpated from north Puget Sound and the San Juan Islands, and less than 100 pairs remain in south Puget Sound and along the coast. The greatest threat to the streaked horned lark is loss of habitat. Biologists estimate that less than 1 percent of native grassland and savanna remains. Conversion of grassland to other uses, such as agriculture and homes, and the encroachment of nonnative plants have been the primary factors contributing to the species' decline. Because these threats are of a high magnitude but are non-imminent, we assigned a listing priority number of 6 to this subspecies.

Western sage grouse, Washington DPS (*Centrocercus urophasianus phaios*)—The Washington DPS (Columbia basin) of the western sage grouse currently occupies approximately 10 percent of its historic distribution in the state in two relatively small areas in central Washington. The abundance of this DPS has declined between 66 percent and 99 percent from historic levels (using low and high estimates). Primary threats to this population include conversion or degradation of native shrub-steppe habitats and small population size, which makes this population more susceptible to inbreeding depression (reduced reproductive vigor) and extirpation from stochastic events (inclement weather, population demographics, altered predation patterns, etc.). Because these threats are low to moderate in magnitude but imminent, we assigned this DPS of western sage grouse a listing priority number of 9.

Reptiles

Sand dune lizard (*Sceloporus arenicolus*)—The sand dune lizard is endemic to a small area in New Mexico and Texas. The primary threats to this species are herbicides used to remove shinnery oak, various activities that destroy and fragment shinnery oak habitat, and overcollection. Currently no Federal or State regulations in New Mexico or Texas protect against take of individuals or their habitat. Due to imminent threats of a high magnitude, we assigned a listing priority number of 2 to this species.

Amphibians

Georgetown salamander (*Eurycea naufragia*)—The Georgetown salamander is an entirely aquatic salamander approximately 5.1 centimeters (cm) (2.0 inches (in)) long. It is known to occur in springs along five tributaries of the San Gabriel River and one cave in the city of Georgetown, Texas. Primary threats include degradation of water quality and reduced available water quantity due to urbanization. Currently no State or Federal regulations provide protection for this salamander. Due to imminent threats of a high magnitude, we assigned a listing priority number of 2 to this species.

Ozark hellbender (*Cryptobranchus alleganiensis bishopi*)—The Ozark hellbender is a large, aquatic salamander native to streams of the Ozark Plateau in Arkansas and Missouri. Records indicate that much of the habitat for the species has been lost or fragmented due to habitat alteration from gravel mining, construction of impoundments, timber harvest and associated erosion, and contamination from pesticides and historic lead and zinc mining. Currently, State regulations make it illegal to take the Ozark Hellbender, but little or no regulation protects the habitat. As a result, most known populations have experienced significant declines and there is little documentation of reproduction. We believe that the current combination of population fragmentation and habitat degradation may prohibit this species from recovering without the intervention of protection and conservation measures afforded under the Act. Due to non-imminent threats of a high magnitude, we assigned a listing priority number of 6 to this subspecies.

Fish

Yellowcheek darter (*Etheostoma moorei*)—The yellowcheek darter is an endemic species of the Little Red River in Arkansas. Construction of Greers Ferry Lake destroyed most of the species' preferred habitat and isolated the species in four tributaries. Factors affecting the remaining populations include loss of suitable breeding habitat, habitat degradation, population isolation, and severe population declines. Recent studies have documented significant declines in the numbers of this fish in the remaining populations. Due to imminent threats of a high magnitude, we assigned a listing priority number of 2 to this species.

Zuni bluehead sucker (*Catostomus discobolus yarrowi*)—The Zuni bluehead sucker is a 20.3-cm (8.0-in) freshwater fish found only in Arizona and New Mexico. The primary threats to this subspecies are road construction, logging, over-grazing, reservoir construction, irrigation withdrawals, and stocking of exotic fishes. Once common in the Little Colorado and Zuni River drainages, it is now thought to be reduced to about 10 percent of historical range. Although considered endangered by the State of New Mexico and a species of special concern by the State of Arizona and the U.S. Forest Service, these designations lack habitat protections needed for long-term conservation. Due to imminent threats of a high magnitude, we assigned a listing priority number of 3 to this subspecies.

Clams

Neosho mucket (*Lampsilis rafinesqueana*)—The Neosho mucket is a freshwater mussel native to Arkansas, Kansas, Missouri, and Oklahoma. The species has declined throughout much of its historic range due to habitat degradation attributed to impoundments, sedimentation, and agricultural pollutants. Currently, it is believed that only one viable population exists; a few remnant populations may remain. Although State regulations limit harvest of this species, there is little protection for habitat. Due to non-imminent threats of a high magnitude, we assigned a listing priority number of 5 to this species.

Texas hornshell (*Popenaias popei*)—The Texas hornshell is a freshwater mussel that is found in New Mexico, Texas, and Mexico. The primary threats are habitat alterations such as impoundments and diversions for agriculture and flood control, contamination of water from the oil and gas industry, and increased sedimentation from prolonged overgrazing and loss of native vegetation. Currently, no Federal or State regulations protect the Texas hornshell from these threats. Due to imminent threats of a high magnitude, we assigned a listing priority number of 2 to this species.

Snails

Phantom Cave snail (*Cochliopa texana)* and Phantom springsnail (*Tryonia cheatumi*)—Both of these aquatic snails occur in only three spring systems and associated outflows in Texas. The primary threat to both species is the loss of surface flows due to declining groundwater levels from drought and pumping for agricultural production. Although the land surrounding their habitat is owned and managed by The Nature Conservancy, Bureau of Reclamation, and Balmorhea State Park, the water needed to maintain their habitat has declined due to a reduction in the spring flows, primarily as result of private groundwater pumping in areas beyond that controlled by these landowners. Currently, there is no protection for either of these aquatic cave snails by either State or Federal law. Due to imminent threats of a high magnitude, we assigned a listing priority number of 2 to these species.

Insects

Nine cave beetles (*Pseudanophthalmus caecus, P. cataryctos, P. frigidus, P. inexpectatus, P. inquistor, P. major, P. pholeter, P. parvus, and P. troglodytes*)—Seven of these nine cave beetles (*Pseudanophthalmus caecus, P. cataryctos, P. frigidus, P. major, P. pholeter, P. parvus, and P. troglodytes*) are currently known to occur in one cave each in Kentucky. *Psuedanophthalmus inexpectatus,* is known to occur in more than one cave

in Kentucky and *P. inquistor* only occurs in Tennessee. Historically, *P. inexpectatus* occurred in three caves; however, it is now considered extirpated from one of these caves and is declining in numbers in one of the remaining two sites. The primary threats to these cave beetles include toxic chemical spills, discharges of large amounts of polluted water, closure or alterations of cave entrances, and disruption of cave energy processes by industrial, residential, commercial, or highway construction. There is currently little or no protection for these species by either the State or Federal regulations. Due to non-imminent threats of a high magnitude, we assigned a listing priority number of 5 to these species.

Whulge checkerspot butterfly (*Euphydryas editha taylori*)—Historically, the subspecies was known from more than 50 locations in British Columbia, Washington, and Oregon. The current range is believed to have declined significantly to less than 15 populations. Threats include changes in vegetation structure and composition of native grassland-dominated prairies due to agricultural conversion, urbanization, and invasion by nonnative woody shrubs; the use of pesticides to control Asian gypsy moths; and inadequacy of regulatory protection against these threats. We have determined that, although the threats are of high magnitude, they are non-imminent; therefore, we are assigning a listing priority number of 6 to this subspecies.

Ferns and Allies

Botrychium lineare (slender moonwort)—*Botrychium lineare* is a small perennial fern that is currently known from a total of nine populations in Colorado, Oregon, Montana, and Washington. In addition to these currently known populations, there are four historic population sites in California, Colorado, Idaho, and Montana and two in Canada. These historic populations have not been seen for at least 20 years and may be extirpated. Identifiable threats to various populations of this species include road maintenance, herbicide spraying, recreation, timber harvest, trampling and grazing by wildlife and livestock, exotic species, and development. Because we concluded that the overall magnitude of threats to *Botrychium lineare* throughout its range is moderate and the overall immediacy of these threats is non-imminent, we assigned this species a listing priority number of 11.

Summary of Listing Priority Changes in Candidates

Mammals

Coachella Valley round-tailed ground squirrel (*Spermophilus tereticaudus chlorus*)—In the 1999 CNOR, we mistakenly assigned the Coachella Valley round-tailed squirrel a listing priority number of 5. This was an incorrect number under the listing priority system for a subspecies, like the Coachella Vally round-tailed ground squirrel. In this notice, we have corrected the listing priority number to a 6.

Washington ground squirrel (*Spermophilus washingtoni*)—Since the designation of the species as a candidate on October 25, 1999, more information has become available regarding the types of soils used by Washington ground squirrels, the effects of agriculture on Washington ground squirrel colonies, the status of the species throughout its range, and the significance of the Oregon population to the species as a whole. The soil types used by the squirrels are distributed sporadically within the species' range, and have been seriously fragmented by human development in the Columbia Basin, particularly conversion to agricultural use. Where agriculture occurs, little evidence of ground squirrel use has been documented, and reports indicate that ongoing agricultural conversion permanently eliminates Washington ground squirrel habitat. The most contiguous, least-disturbed expanse of suitable Washington ground squirrel habitat, and likely the densest distribution of colonies within the range of the species, occurs on the Boeing site and Boardman Bombing Range in Oregon. Substantial threats to the species occur throughout its range, including the remaining populations in Oregon. Even on State-owned lands in Oregon, the loss of known sites is likely. The City of Ione and Morrow County have proposed the construction of a highway through the largest area of suitable and occupied habitat in the range of the species. The loss of significant numbers of colonies in Oregon would be detrimental to the continued existence of the Washington ground squirrel. In Washington, recent declines have been precipitous and for unknown reasons. In 2001, entire colonies of ground squirrels have been lost on the Columbia National Wildlife Refuge and Seeps Lake Management Area near Othello, Washington, despite the protected status of the species in the area. Biologists observed significant declines in body mass, and many adult squirrels experienced a complete failure to reproduce in 2001, likely as a result of starvation. Individuals that lacked sufficient body weight are not likely to survive the seven to eight month hibernation period this species experiences. All of these threats have been observed in the past year, are likely to continue, and appreciably reduce the likelihood of survival of many Washington ground squirrel colonies across the range of the species. Based on this evaluation, we changed the listing priority number from a 5 to a 2 due to the imminent threats of a high magnitude.

Birds

Rota bridled white-eye (*Zosterops rotensis*)—Recent authorities on the taxonomy of Micronesian white-eyes agree that the Rota population is distinct from others in the Marianas and should be recognized as a separate species. Therefore, we refer to this bird as the Rota bridled white-eye (*Z. rotensis*). Recent genetic evidence from mitochondrial DNA sequences showed that two distinct lineages occur within the Marianas, one on Guam, Saipan, Tinian, and Aguijan, and the other on Rota. Threats include introduced birds, rats, habitat destruction, alien plants and habitat alteration, and typhoons. Although the relative importance of the threats to the Rota bridled white-eye are not completely understood, based on the large (89%) and rapid decline in population size that has occurred since 1982 and appears to be continuing, these threats must be imminent and of high magnitude. In addition, since we now recognize the Rota bridled white-eye as a separate species, we changed the listing priority from a 6 to a 2. Based, in part, on this change in priority, on October 3, 2001 (66 FR 50383) we published a proposed rule to list this species as endangered.

Clams

Alabama pearlshell (*Margaritifera marrianae*)—We changed the listing priority number from a 5 to a 2 since the threats are now imminent for this species based on the apparent loss of one of the three known extant populations in 1999 and drought stress to the surviving populations in 2000.

Snails

Diamond Y springsnail (*Tryonia adamantina*) and Gonzales springsnail (*Tryonia circumstriata* (= *stocktonensis*))—We changed the listing priority number from a 5 to a 2 for both of these species due to new imminent threats from the recent introduction of a nonnative snail (*Melanoides* sp.) into the native snails'

habitat. The nonnative snail is likely competing with the native snails for space and resources.

Tumbling Creek cavesnail (*Antrobia culveri*)—We changed the listing priority number from a 7 to a 1 due to new data obtained in 2000 and 2001 that indicate the threat to this species is much greater than originally estimated. The continued downward trend, including the documentation of no snails in study plots on January 11, 2001, provides a strong indication that whatever threats are causing the decline, they are imminent and of a high magnitude. It is likely that this species, the only known representative of its genus, will become extinct within the foreseeable future without appropriate conservation measures.

Insects

Carson wandering skipper (*Pseudocopaeodes eunus obscurus*)—We are changing the listing priority number from a 12 to a 3 because threats we previously considered to be ameliorated now appear imminent. A Cooperative Agreement was signed by the Service, Nevada Department of Transportation, Federal Highways Administration, and Bureau of Land Management in October 1999. This agreement was developed to outline the actions necessary for the conservation and management of Carson wandering skipper. A draft conservation plan for the Carson wandering skipper was prepared in 2000 to address potential conservation measures which could be implemented at occupied sites. However, implementation of this agreement and a final conservation plan now appear unlikely in the foreseeable future due to the unwillingness of the private and public landowners to support conservation efforts. We are also concerned about proposed water development plans near the Pyramid Lake site and the spread of whitetop, a nonnative plant species, on private property at the Honey Lake site, as this invasive species could eliminate habitat for the Carson wandering skipper. Since Carson wandering skipper became a candidate species, further evidence supports the likely extirpation of the subspecies from the Carson Hot Springs site. Therefore, based on the high magnitude of imminent threats, we assigned this subspecies a listing priority number of 3. See additional information on this species below under Petition of a Candidate Species section.

Highlands tiger beetle (*Cicindela highlandensis*)—We changed the listing priority number for the Highlands tiger beetle from a 2 to a 5 because the immediacy of the threats to its scrub habitats on the Lake Wales Ridge in central Florida have decreased. In particular, the State of Florida and conservation groups have acquired and are actively acquiring occupied and unoccupied scrub habitats for the species such that most quality habitats for the species have been acquired. There has also been an increase in prescribed burning on the Lake Wales Ridge that resulted in improved habitat conditions for the species. Therefore, based on a high magnitude of non-imminent threats, we assigned this species a listing priority number of 5.

Salt Creek tiger beetle (*Cicindela nevadica lincolniana*)—We changed the listing priority number from a 6 to a 3 because the immediacy of the threats to the isolated wetlands where the beetle occurs continues to increase due to the planned widening of the interstate highway, construction of a new interchange, and the anticipated developments that will occur along the highway corridor. In addition, the apparent reduction in U.S. Army Corps of Engineers jurisdiction over isolated wetlands may hamper the State's ability to protect the wetland habitats essential to the beetle's survival since the Nebraska Department of Environmental Quality will not have a nexus to implement review under the State section 401 water quality certification program. Therefore, based on a high magnitude of now imminent threats, we assigned this subspecies a listing priority number of 3.

Arachnids

Warton Cave meshweaver (*Cicurina wartoni*)—We changed the listing priority number from an 8 to a 2 due to continued, imminent threats of a high magnitude from nearby development and fire ants. In two previous CNORs, we assigned a listing priority number of 2 to this species, but based on the development of a conservation agreement to protect this cave, we changed the listing priority number to an 8 in the 1999 CNOR. Since this conservation agreement is still under development and recommended management actions (including fire ant control and complete fencing) are not yet in place to adequately protect the only known location of the species, we are now assigning a listing priority number of 2 to this species.

Plants

Astragalus tortipes (Milk-vetch, Sleeping Ute)—We changed the listing priority number for *Astragalus tortipes* from a 2 to an 8 because Spring 2000 surveys indicated an increase in the number of individual plants from the original estimate of 2,000–3,000 individual plants to 3,744 plants, and there has been an increase in range. In addition, we believe the threats, although not entirely eliminated, have been reduced; oil and gas development may occur in the future, but only a few plant locations are on terrain that would be affected. Consequently, *A. tortipes* should be retained on the candidate list, but with a reduced listing priority, based on reduced threats to a plant with a limited range.

Bidens conjuncta (Kóokóolau)—We changed the listing priority number for *Bidens conjuncta* from 5 to 8 because the number of individuals has increased from 300 to 2,200 individuals. While the original threats remain imminent and rats are also now known to be a threat, the overall magnitude of the threat is somewhat reduced with the large increase in numbers.

Cyanea calycina (HaHa)—Due to taxonomic changes, *Cyanea calycina* is now considered a separate species; therefore, we are changing the listing priority number to a 5 (previously we designated it a 6).

Cyanea lanceolata (formerly *Cyanea lanceolata* ssp. *lanceolata,* and prior to that *Rollandia lanceolata*)—Originally treated as a subspecies of *C. lanceolata,* this entity has been elevated to full species status. As such, we are changing the listing priority number to a 5 (previously we designated it a 6).

Cyclosorus boydiae var. *boydiae* (formerly *Thelypteris boydiae*)—This plant species has been moved from the genus *Thelypteris* to the genus *Cyclosorus,* and is also now considered a subspecies. As a result, we changed the listing priority number to a 6 (previously we designated it a 5).

Cyclosorus boydiae var. *kipahuluensis* (formerly *Thelypteris boydiae*)—This plant species has been moved from the genus *Thelypteris* to the genus *Cyclosorus,* and is also now considered a subspecies. As a result, we changed the listing priority to 6 (previously it was designated 5).

Erigeron basalticus (Basalt daisy)—*Erigeron basalticus* is of extremely limited distribution, and is found only in a very narrow habitat type. Although several smaller subpopulations of the species have declined precipitously in the past decade, the major portion of the population appears to have remained stable during this same period. Currently, the cause of the decline is unknown, as is the risk to the larger subpopulations. While we identified various potential threats to the species, these threats do not appear to be imminent and are of a moderate to low magnitude. Therefore, we are assigning

this plant species a listing priority of 11 (previously we assigned the species a listing priority of 8).

Leavenworthia texana (Texas golden gladecress)—We changed the listing priority number from a 5 to a 2 based on recent survey information that shows the known sites are now restricted to two. A third site is currently closed to visitors, and its status is unknown. Of the two known sites, a significant reduction in the number of plants has occurred, probably due to the extreme drought in the area.

Pleomele forbesii (Hala pepe)—Additional surveys have increased the known number of individuals in the 16 populations from 80–180 to 500. Based on this new information, we now believe the threat is non-imminent. Because of this, we are changing the listing priority number from a 2 to a 5.

Schiedea pubescens (formerly *Schiedea pubescens* var. *pubescens*)—*Schiedea pubescens* was originally treated as a subspecies. Recently, however, it has been elevated to full species status. Therefore, we changed the priority number from a 3 to a 2.

Solanum nelsonii (Popolo)—There has been a rapid decline of the populations of *Solanum nelsonii* on the islands within the remote Hawaiian Islands National Wildlife Refuge. The number of individuals has decreased from 3,000 to 300 individuals. Therefore, we changed the priority number from an 11 to a 5.

Candidate Removals

Snails

Wet Canyon talussnail (*Sonorella macrophallus*)—We removed this species from candidate status since the greatest threat to the species, impact from recreation, was eliminated through a 1999 Conservation Agreement with the Coronado National Forest, Arizona. The National Forest closed a trail that traversed the species' habitat and prohibits campfires in the Wet Canyon picnic area during periods of fire closure. National Forest staff are also implementing a monitoring program to ensure the trail closure remains in place and to evaluate its effectiveness.

Plants

Cyanea pseudofauriei (Haha)—Originally thought to be a newly discovered species, known from one population totaling a few hundred individuals, this population is now considered part of a more widespread species (*Cyanea fauriei*) that is considered relatively stable.

Melicope macropus (Alani)—This now extinct species was thought to be rediscovered in 1990. However, this ''rediscovered'' population is now known to be misidentified and is actually *Melicope kauaiensis,* which is a more common species.

Opuntia whipplei var. *multigeniculata* (Blue diamond cholla)—Active management of lands supporting the blue diamond cholla and its habitat and the execution of the conservation agreement has led to our decision to remove the species from the candidate list. This agreement includes conservation actions that specifically address and diminish or eliminate threats to the species. Therefore, we are removing this species from the candidate list.

Phyllostegia helleri (no common name)—This population was originally thought to be *Phyllostegia helleri,* but was actually a misidentification of *Phyllostegia electra. Phyllostegia helleri* has not been seen since 1916, and therefore, we believe it to be extinct.

Phyllostegia imminuta (no common name)—Historically known from Maui and Lanai and thought to be extinct since 1920, this species was thought to be rediscovered in 1 population totaling approximately 10 individuals in Waikamoi, Maui. However, further study revealed that the plants were misidentified and are actually *Phyllostegia macrophylla.* Therefore, we believe this species to be extinct.

Cyperus odoratus (formally *Torulinium odoratum* ssp. *auriculatum*) (pu'uka'a (= kili'o'opu, kiolohia, mau'u pu'u, puko'a))—This subspecies is no longer recognized, and the species has been incorporated into the more widespread species *Cyperus odoratus.*

Lysimachia venosa (no common name)—The historic range of this species was throughout the island of Kauai. While there are no historic records of numbers of populations or individuals, qualitative accounts indicate that the species was relatively widespread and abundant on Kauai. The last known population of only a few individuals could not be relocated in 1999. Therefore, we believe this species to be extinct.

Petition for a Candidate Species

The Act provides two mechanisms for considering species for listing. First, the Act requires us to identify and propose for listing those species that require listing under the standards of section 4(a)(1). We implement this through the candidate program, discussed above. Second, the Act provides a mechanism for the public to petition us to add a species to the Lists. Under section 4(b)(3)(A), when we receive such a petition, we must determine within 90 days, to the maximum extent practicable, whether the petition presents substantial information that listing is warranted (a ''90-day finding''). If we make a positive 90-day finding, under section 4(b)(3)(B) we must make one of three possible findings within 12 months of the receipt of the petition (a ''12-month finding'').

The first possible 12-month finding is that listing is not warranted, in which case we need take no further action on the petition. Second, we may find that listing is warranted, in which case we must promptly publish a proposed rule to list the species. Once we publish a proposed rule for a species, section 4(b)(5) and (6) govern further procedures, regardless of whether or not we issued the proposal in response to a petition. Third, we may find that listing is ''warranted but precluded.'' Such a finding means that immediate publication of a proposed rule to list the species is precluded by higher priority listing proposals, and that we are making expeditious progress to add and remove species from the Lists, as appropriate.

The standard for making a 12-month warranted but precluded finding on a petition to list a species is identical to our standard for making a species a candidate for listing. Therefore, we add all petitioned species subject to such a finding to the candidate list. Similarly, we can treat all candidates as having been subject to both a positive 90-day finding and a warranted but precluded 12-month finding. This notice constitutes publication of such findings pursuant to section 4(b)(3) for each candidate species listed in Table 1 that is the subject of a subsequent petition to list as threatened or endangered. Under our Petition Management Guidance, made available on July 9, 1996 (61 FR 36075), we consider a petition to list a species already on the candidate list to be a second petition and, therefore, redundant. We do not interpret the petition provisions of the Act to require us to make a duplicative finding. Therefore, we are not making additional 90-day findings or initial 12-month findings on petitions to list species that are already candidates.

Pursuant to section 4(b)(3)(C)(i) of the Act, when, in response to a petition, we find that listing a species is warranted but precluded, we must make a new 12-month finding each year until we publish a proposed rule or make a determination that listing is not warranted. These subsequent 12-month findings are referred to as recycled petition findings. As discussed below, we will make recycled petition findings for petitions on such species via our

Candidate Notices of Review such as this one.

On June 20, 2001, the United States Court of Appeals for the Ninth Circuit held that the 1999 CNOR (64 FR 57534 (Oct. 25, 1999)) did not constitute valid warranted but precluded 12-month petition findings for the Gila chub and Chiracahua leopard frog. *Center for Biological Diversity* v. *Norton,* 2001 U.S. App. LEXIS 13736 (9th Cir. 2001). In particular, the Court found that inclusion of these species as one line each on the table of candidates in the 1999 CNOR, with no further explanation, did not satisfy the section 4(b)(3)(B)(iii)'s requirement that the Service publish ''a description and evaluation of reasons and data on which the finding was based'' in the **Federal Register**. The Court found that this one-line statement of candidate status also precluded meaningful judicial review. Moreover, the Court found that candidate status did not guarantee that annual reviews of warranted but precluded petitioned species would take place pursuant to section 4(b)(3)(C)(i). Finally, the Court suggested, but did not decide, that the 1999 CNOR met the Act's requirements for positive 90-day petition findings.

Although we do not agree with the conclusions of the Ninth Circuit, we have revised this CNOR to address the Court's concerns. We have included below a description of why the listing of every petitioned candidate species is both warranted and precluded at this time. Pursuant to section 4(b)(3)(C)(ii), any party with standing may challenge the merits of one of the our petition findings incorporated in this CNOR. The analysis included herein, together with the administrative record for the decision at issue, will provide an adequate basis for a court to review the petition finding. Finally, nothing in this document or any of our policies should be construed as in any way modifying the Act's requirement that we make a new 12-month petition finding for each petitioned candidate within one year of the date of publication of this CNOR. If we fail to make any such finding on a timely basis, whether through publication of a new CNOR or some other form of notice, we may be subject to a deadline law suit pursuant to section 11(g)(1)(C), as it would be with respect to any other failure to comply with a section 4 deadline.

We reviewed the current status of and threats to the 37 species regarding which we have found petitioned action to be warranted but precluded. As a result of this review, we made continued warranted but precluded findings on the petitions for all 37 species. For the 32 of these species that are candidates, we maintain them as candidates and identify them by the code ''C*'' in the category column on the left side of Table 1. As discussed above, this finding means that the immediate publication of a proposed rule to list these species is precluded by the following higher priority listing actions: Court ordered or settlement agreements to complete the critical habitat determinations for San Bernardino kangaroo rat, Monterey and robust spineflowers, Quino checkerspot butterfly, 57 Hawaii Island plants, Otay tarplant, Oahu elepaio, Blackburn sphinx moth, Newcomb's snail, 2 Kauai invertebrates, 81 Kauai and Niihau plants, yellow and Baker's larkspurs, 3 Southern California coastal plants, Keck's checkermallow, purple amole, 69 Maui and Kahoolawe plants, Santa Cruz tarplant, 37 Lanai plants, 49 Molokai plants, 6 Northwestern Hawaiian Islands plants, 101 Oahu plants, 4 fairy shrimp, Carolina heelsplitter and Appalachian elktoe, and a final determination for the Sacramento splittail. In addition, the following are higher priority statutory deadlines: final listing for Mississippi gopher frog, golden sedge, mountain plover, and desert yellowhead.

In addition to identifying these species in Table 1, we also present brief summaries of why these candidates warrant listing. More complete information, including references, are found in the candidate forms. You may obtain a copy of these forms from the Regional office that has the lead for the species or from the Fish and Wildlife Service's *Web site: http://endangered.fws.gov/.*

We find that the immediate issuance of a proposed rule and timely promulgation of a final rule for each of these actions has for the preceding year been and will over the next year be precluded by higher priority listing actions. During the preceding year, almost all of our limited listing budget has been needed to take various listing actions to comply with court orders and court-approved settlement agreements. For a list of the listing actions taken over the last year, see the discussion of ''Expeditious Progress,'' below.

Regarding the following year, although we do not yet have a final budget, the majority of that budget will again likely be needed to take listing actions to comply with court orders and court-approved settlement agreements. Currently, we will need to work on or complete the following actions: proposed critical habitat designations—4 fairy shrimp (and 11 plants), 6 plants from Northwestern Hawaiian Islands, reproposal for plants from Kauai and Niihau, reproposal for plants from Maui and Kahoolawe, reproposal for plants from Lanai, reproposal for plants from Molokai, 57 plants from Hawaii, 5 carbonate plants from California, 103 Oahu plants, 6 Guam species (following prudency re-determinations), Keck's checkermallow, yellow and Baker's larkspur, Ventura Marsh milk-vetch, Rio Grande silvery minnow, 4 invertebrates from New Mexico, 9 invertebrates from Bexar County, Texas, Gila chub, Topeka shiner, gulf sturgeon, and Prebles meadow jumping mouse; final critical habitat designations—quino checkerspot butterfly, Monterey spineflower, robust spineflower, Oahu elepaio, San Bernardino kangaroo rat, 3 southern California plants, Kneeland Prairie pennycress, purple amole, Santa Cruz tarplant, Otay tarplant, 81 plants from Kauai and Niihau, 2 Kauai invertebrates, Blackburn's sphinx moth, Newcomb's snail, 4 fairy shrimp (and 11 plants), 69 plants from Maui and Kahoolawe, 37 plants from Lanai, 5 carbonate plants from California, 49 plants from Molokai, 6 plants from northwest Hawaiian Islands, 57 plants from Hawaii, Keck's checkermallow, yellow and Bakers larskspurs, and 101 plants from Oahu, Rio Grande silvery minnow, 9 invertebrates from Bexar County, Texas; Carolina heelsplitter, gulf sturgeon, Appalachian elktoe, and Great Plains breeding population of piping plover; 90-day petition findings—Miami blue butterfly; 12-month petition findings—Big Cypress fox squirrel, and Columbia spotted frog; proposed listing rules—island fox; final listing determinations—flat-tailed horned lizard, showy stickseed, San Diego ambrosia, southern California DPS of mountain yellow-legged frog, coastal cutthroat trout, Chiricahua leopard frog, vermilion darter, Mississippi gopher frog, and golden sedge; emergency listings—pygmy rabbit, Carson's wandering skipper, and Tumbling Creek cavesnail.

Issuance of proposed listing rules for most of the candidates even with the highest listing priority numbers (i.e., 1, 2, or 3) will continue to be precluded next year due to the need to take actions to comply with court orders and court-approved settlement agreements, as well as the need to comply (or end non-compliance) with the unqualified statutory deadlines for making 12-month petition findings and final listing determinations on proposed rules. Currently, in addition to those final determinations required by court orders and settlement agreements, we will also need to work in the next year on final determinations for at least 23 species:

Cowhead Lake tui chub, meadowfoam, lomatium, 3 Mariana Islands plants, 12 pomace flies, Mariana fruit bat, Dolly Varden trout, desert yellowhead, and mountain plover. Again, in addition to those 12-month findings required by court orders and settlement agreements, we must make initial 12-month findings for at least 7 species: Yosemite toad, California spotted owl, mountain yellow-legged frog (entire population), Henderson's horkelia, Mt. Ashland lupine, and 2 Puerto Rican plants. If over the next year we can devote any resources to issuing proposed rules for the highest priority candidates without jeopardizing our ability to comply with court orders, court-approved settlement agreements, or unqualified statutory deadlines, we will do so.

Finally, with respect to those candidates with lower priority (i.e., those that have listing priority numbers of 4–12), work on proposed rules for those species is also precluded by the need to issue proposed rules for those species that are higher priorities, particularly those facing high magnitude, imminent threats (i.e., listing priority numbers of 1, 2, or 3). Table 1 lists the listing priority number for each candidate species.

Mammals

Black-tailed prairie dog (*Cynomys ludovicianus*)—As described in our February 4, 2000, 12-month finding (65 FR 5476), black-tailed prairie dog populations have been significantly reduced and are subject to many persistent threats. We believe that various threats (especially plague and pest control efforts via chemical agents) continue to cause local extirpations that could lead to the species becoming vulnerable in a significant portion of its range. Additionally, the species may have difficulty coping with challenges without the advantage of its historic abundance and wide distribution. Accordingly, the vulnerability of the species to population reductions may be related less to its absolute numbers than to the number of colonies in which it exists, their size, their geospatial relationship, existing barriers to immigration and emigration, and the number and nature of the direct threats to the species. While positive first steps to conserve and manage black-tailed prairie dogs have been made by some States and Tribes, more conservation work will be needed by all States, Tribes, and Federal agencies to sufficiently reduce threats to the species. The overall magnitude and immediacy of threats to this species remain unchanged since the 12-month finding was published with a listing priority number of 8.

Island fox (*Urocyon littoralis*)—See above summary of new species for discussion on why this species warrants listing. The above summary is based on information contained in our files, including information from the petition received on June 6, 2000. Although work on court-ordered section 4 actions have precluded us from issuing a proposed rule to date, despite the fact this species has a listing priority of 2, we recently entered into a settlement agreement on October 2, 2001, (*Center for Biological Diversity, et al.* v. *Norton,* Civ. No. 01–2063 (JR) (D.D.C.)) that will require us to deliver by November 30, 2001, a proposed rule to the **Federal Register** for publication.

Sea otter, Aleutian Islands DPS (*Enhydra lutris kenyoni*)—The following summary is based on information contained in our files, including information from the petition received on October 26, 2000. The worldwide population of sea otters in the early 1700s has been estimated at 150,000 to 300,000. Extensive commercial hunting of sea otters in Alaska began following the arrival of Russian explorers in 1741 and continued during the 18th and 19th centuries. By the time sea otters were afforded protection from commercial harvests by international treaty in 1911, the species was nearly extinct throughout its range, and may have numbered only 1,000 to 2,000 individuals. Today three subspecies of sea otter have been identified. The northern sea otter contains two subspecies: *Enhydra lutris kenyoni,* which occurs from the Aleutian Islands to Oregon, and *Enhydra lutris lutris,* which occurs in the Kuril Islands, Kamchatka Peninsula, and Commander Islands in Russia. The third subspecies, *Enhydra lutris nereis,* occurs in California and is known as the southern sea otter. Until recently, southwest Alaska had been considered a stronghold for sea otters. In the mid-1980s, biologists believed that 80% of the world population of sea otters occurred in southwest Alaska. Recent aerial surveys document drastic population declines (up to 90%) have occurred throughout this area during the past 10–15 years. Today as few as 9,000 sea otters may remain in the Aleutian Islands. Potential threats include both natural fluctuations and human activities, which may have caused changes in the Bering Sea ecosystem. Subsistence hunting occurs at very low levels and does not appear to be a factor in the decline. While disease, starvation, and contaminants have not been implicated at this time, additional evaluation of these factors is warranted. The hypothesis that predation by killer whales is causing the sea otter decline should also be further studied. Due to the precipitous and rapid nature of the ongoing population decline, we have assigned the Aleutian Islands DPS of *Enhydra lutris kenyoni* a listing a priority of 3 under our listing priority system. Additionally, we have no indication that the decline has reached an endpoint, and therefore immediate action is needed.

Sheath-tailed bat, American Samoa and Aguijan DPS (*Emballonura semicaudata*)—The following summary is based on information contained in our files, including information from the petition received on March 3, 1986. Historically the sheath-tailed bat was known from the southern Mariana Islands, Palau, and Western and American Samoa. Populations on the Mariana Islands of Guam and Rota have been extirpated and the Mariana population on Aguijan has been reduced to approximately 10 individuals. A similar drastic decline has occurred in American Samoa where populations of this bat were estimated at over 10,000 in 1976. In 1993, only four bats were recorded. This species resides in caves and is very susceptible to disturbance. The populations in American Samoa and the Mariana Islands are at the extreme limits of the species' range. Roost sites have been rendered unsuitable for bats by human intrusion into caves and the use of some caves as garbage dumps. Typhoons have also damaged some caves by blocking entrances or by flooding coastal caves. The loss of roost sites has severely restricted population size, especially in American Samoa, where few caves exist. In addition, small populations and limited numbers of populations place this distinct population segment at great risk of extinction from inbreeding, stochastic events, and storms. Based on immediate threats of a high magnitude, we assigned the American Samoa and Aguijan DPS of the sheath-tailed bat a listing priority number of 3.

Southern Idaho ground Squirrel (*Spermophilus brunneus endemicus*)—See above summary of listing priority changes for discussion on why this species warrants listing. The above summary is based on information contained in our files, including information from the petition received on January 29, 2001.

Washington ground squirrel (*Spermophilus washingtoni*)—See above summary of new species for discussion on why this species warrants listing. The above summary is based on information contained in our files,

including information from the petition received on March 2, 2000.

Birds

Band-rumped storm-petrel, Hawaii DPS (*Oceanodroma castro*)—The following summary is based on information contained in our files, including information from the petition received on May 8, 1989. Breeding season surveys on Hawaii, Maui, and Kauai, as well as reports of fledglings picked up on Hawaii and Kauai, confirm that small populations still exist on these Hawaiian islands. Estimates of the total State-wide population could exceed 100 pairs if viable breeding populations exist on Maui and Hawaii. Although small populations do occur on Maui and Hawaii, we have been unable to determine if they are viable; certainly they are not large and they represent a fraction of pre-historic distribution. Predation by introduced species is believed to have played a significant role in reducing storm-petrel numbers and in exterminating colonies in the Pacific and other locations worldwide. Additionally, artificial lights have had a significant negative effect on fledgling young and, to a lesser degree, adults. Artificial lighting of roadways, resorts, ballparks, residences, and other development in lower elevation areas attracts and confuses night-flying, storm-petrel fledglings, resulting in ''fall-out'' and collisions with buildings and other objects. Currently, the species is not known to be taken or used for commercial, recreational, scientific, or educational purposes. During surveys on Mauna Loa, Hawaii, in 1992, several caches of Hawaiian dark-rumped petrel carcasses associated with feral cat predation were recorded in areas where band-rumped storm-petrel vocalizations were recorded. Based on imminent threats of a high magnitude, we assigned this Hawaii DPS of the band-rumped storm-petrel a listing priority number of 3.

Gunnison sage grouse (*Centrocercus minimus*)—The following summary is based on information contained in our files, including information from the petition received on January 25, 2000. The range of the Gunnison sage grouse has been reduced to less than 25 percent of its historic range. Size of the range and quality of its habitat have been reduced by direct habitat loss, fragmentation, and degradation from building development, road and utility corridors, fences, energy development, conversion of native habitat to hay or other crop fields, alteration or destruction of wetland and riparian areas, inappropriate livestock management, competition for winter range by big game, and creation of large reservoirs. Other factors affecting the Gunnison sage grouse include fire suppression, overgrazing by elk (*Cervus elaphus*) and deer (*Odocoileus hemionus*), drought, disturbance or death by off-highway vehicles, harassment from people and pets, noise that impairs acoustical quality of leks, genetic depression, pesticides, pollution, and competition for habitat from other species. For greater detail as to why listing is warranted, see 65 FR 82310. We consider all of these threats to be of high magnitude but non-imminent; therefore, we assigned the Gunnison sage grouse a listing priority of 5.

Lesser prairie-chicken (*Tympanuchus pallidicinctus*)—The following summary is based on information contained in our files, including information from the petition received on October 5, 1995. Biologists estimate that the occupied range has declined at least 78% since 1963 and 92% since the 1800s. The most serious threats to the lesser prairie-chicken are loss of habitat from conversion of native rangelands to introduced forages and cultivation, and cumulative habitat degradation caused by severe grazing, fire suppression, herbicides, and structural developments. Many of these threats may exacerbate the normal effects of periodic drought on lesser prairie-chicken populations. In many cases, the remaining suitable habitat has become fragmented by the spatial arrangement of properties affected by these individual threats. We view current and continued habitat fragmentation to be a serious ongoing threat that facilitates the extinction process through several mechanisms: remaining habitat patches may become smaller than necessary to meet the yearlong requirements of individuals and populations; necessary habitat heterogeneity may be lost to large areas of monoculture vegetation and/or homogenous habitat structure; areas between habitat patches may harbor high levels of predators or brood parasites; and the probability of recolonization decreases as the distance between suitable habitat patches expands. Inadequacy of existing regulatory mechanisms to protect lesser prairie-chicken habitat was cited as a potential threat to the species in the Service's 12-month finding. Most occupied lesser prairie-chicken habitat throughout its current range occurs on private land, where States continue to have little authority to protect the species or its habitat, with the exception of setting harvest regulations. Although some federal lands within occupied range have voluntarily accommodated some needs of the lesser prairie-chicken, we believe that the prairie-chicken cannot be sufficiently conserved only on Federal lands to prevent extinction. Concern exists that recreational hunting and harassment are also potential threats to the species. While we do not believe that overutilization through recreational hunting is a primary cause of lesser prairie-chicken decline, we are concerned that small and fragmented populations may be vulnerable to local extirpations caused by repeated harvest pressure, especially near leks. Therefore, we suggest conservative harvest limits and careful oversight of harvest pressure on small and fragmented populations. Similarly, the effect of recreational viewing at leks is unknown, although likely to be minimal if disturbance is avoided by observers remaining in vehicles or blinds until birds disperse naturally from the lek, and observations are limited to robust leks in close proximity to other active leks. Based on all currently available information, we find that ongoing threats to the lesser prairie-chicken, as outlined in the 12-month finding, remain unchanged and lesser prairie-chickens continue to warrant federal listing as threatened. We have determined that the overall magnitude of threats to the lesser prairie-chicken throughout its range are moderate, and that the threats are ongoing, thus they are considered imminent. Consequently, a listing priority of 8 remains appropriate for the species. The magnitude of threats to lesser prairie-chickens rest primarily on the quality of existing habitat. At present, all States within occupied range of the lesser prairie-chicken are committing significant resources via personnel, outreach, and habitat improvement incentives to landowners to recover the species. We recognize that measurable increases in populations often come years after certain habitat improvements occur. We believe that barring prolonged drought, the species' status is improving overall and should continue to improve in future years. Therefore, we cannot at this time justify elevating the listing priority of the lesser prairie-chicken based on magnitude of threats. Finally, we maintain that remaining populations are becoming increasingly fragmented, and therefore vulnerable to local extinctions. This is particularly true for isolated populations of lesser prairie-chickens in the Permian Basin/western panhandle of Texas and areas south of highway 380 in southeastern New Mexico. The impending loss of

these populations is of major concern to us and efforts to address this are ongoing. However, we believe that, given all currently available information, the net benefits of ongoing conservation activities by the States, Federal agencies, and private groups, combined with the recent increase in both range and numbers in Kansas, exceed the latest negative trends of local populations in the southern periphery of occupied range. However, should the current conservation momentum fail to stabilize and increase existing populations throughout significant portions of the remaining range, we will consider elevating the listing priority of the species.

Yellow-billed cuckoo, western continental U.S. DPS (*Coccyzus americanus*)—See above summary of new candidate species for discussion on why this DPS of the yellow-billed cuckoo warrants listing. The above summary is based on information contained in our files, including information from the petition received on February 9, 1998. Also see our 12-month finding (66 FR 38611) published on July 25, 2001.

Reptiles

Louisiana pine snake (*Pituophis ruthveni*)—The following summary is based on information contained in our files, including information from the petition received on July 19, 2000. The Louisiana pine snake historically occurred in portions of west-central Louisiana and extreme east-central Texas. Louisiana pine snakes have not been documented in over a decade in some of the best remaining habitat within their historical range. Surveys and results of Louisiana pine snake trapping and radio-telemetry suggest that extensive population declines and local extirpations have occurred during the last 50 to 80 years. The quality of remaining Louisiana pine snake habitat has been degraded due to logging, fire suppression, short-rotation silviculture, and conversion of habitat to other uses such as grazing. Other factors affecting Louisiana pine snakes include low fecundity (reproductive output), which magnifies other threats and increases the likelihood of local extinctions, and vehicle mortality, which may cause significant impacts to the Louisiana pine snake's population numbers and community structure. Due to non-imminent threats of a high magnitude, we assigned a listing priority number of 5 to this species.

Cagle's map turtle (*Graptemys caglei*)—The following summary is based on information contained in our files, including information from the petition received on April 26, 1991. Cagle's map turtle occurs in scattered sites in seven counties in Texas on the Guadalupe, San Marcos, and Blanco Rivers. Loss and degradation of riverine habitat from large and/or small impoundments (dams or reservoirs) is the primary threat to Cagle's map turtle. One detrimental effect of impoundment is the loss of riffle and riffle/pool transition areas used by males for foraging. Depending on its size, a dam itself may be a partial or complete barrier to Cagle's map turtle movements and could fragment a population. Construction of smaller impoundments and human activities on the river have likely eliminated or reduced foraging and basking habitats. Cagle's map turtle is also vulnerable to over-collecting and target shooting, and current regulations are inadequate to protect this species. Due to non-imminent threats of a high magnitude, we assigned a listing priority number of 5 to this species.

Amphibians

Columbia spotted frog, Great Basin DPS (*Rana luteiventris*)—The following summary is based on information contained in our files, including information from the petition received on May 1, 1989. Recent work by researchers in Idaho and Nevada has documented the loss of historically known sites, reduced numbers of individuals within local populations, and declines in the reproduction of those individuals. Since 1996, extensive surveys throughout southern Idaho and eastern Oregon have led to increases in the number of known spotted frog sites. Although efforts to survey for spotted frogs have increased the available information regarding known species locations, most of these sites support only small numbers of frogs. Extensive monitoring at 10 of the 46 occupied sites since 1997 indicates a decline in the number of adult spotted frogs encountered. All known populations in southern Idaho and in eastern Oregon appear to be functionally isolated. Spotted frog habitat degradation and fragmentation is probably a combined result of past and current influences of heavy livestock grazing, spring alterations, agricultural development, urbanization, and mining activities. Based on imminent threats of high magnitude, we assigned a listing priority number of 3 to this DPS of the Columbia spotted frog.

Oregon spotted frog, West Coast DPS (*Rana pretiosa*)—The following summary is based on information contained in our files, including information from the petition received on May 4, 1989. Based on surveys of historic sites, this DPS of the Oregon spotted frog is now absent from at least 76 percent of its former range. The west coast DPS may be absent from as much as 90 percent of its former range because the collections of historic specimens did not adequately reflect its actual geographic and elevational range. Threats to the species' habitat include development, livestock grazing, introduction of nonnative plant species, changes in hydrology due to construction of dams and alterations to seasonal flooding, poor water quality, and water contamination. Additional threats to the species are predation by nonnative fish and introduced bullfrogs. Based on these threats, we assigned this DPS of Oregon spotted frog a listing priority number of 3.

California tiger salamander (entire population except where listed) (*Ambystoma californiense*)—The following summary is based on information contained in our files, including information from the petition received on February 26, 1992. The California tiger salamander has been eliminated from 54 percent of its historic breeding sites, and has lost an estimated 65 percent of its habitat. The distribution of the species is now discontinuous and fragmented throughout its range. All of the estimated seven genetic populations of this species have declined significantly because of urban and agricultural development, and other human-caused factors in breeding and upland habitat used for estivation and migration. Existing regulatory mechanisms are inadequate to protect California tiger salamander habitat. Based on non-imminent threats of a high magnitude, we assigned this species a listing priority number of 5.

Boreal toad, Southern Rocky Mountains DPS (*Bufo boreas boreas*)—The following summary is based on information contained in our files, including information from the petition received on September 30, 1993. Boreal toads of the Southern Rocky Mountain DPS were once common throughout much of the high elevations in Colorado, in the Snowy and Sierra Madre Ranges of southeast Wyoming, and at three breeding localities at the southern periphery of their range in the San Juan Mountains of New Mexico. In the late 1980s boreal toads were found to be absent from 83 percent of breeding localities in Colorado and 94 percent of breeding localities in Wyoming previously known to contain toads. In 1999, the number of known breeding localities increased to 50, with 1 in Wyoming, none in New Mexico, and the remaining sites in Colorado. This

increase in known breeding localities, however, was likely due to survey efforts rather than expansion of the population. Land use in boreal toad habitat includes recreation, timber harvesting, livestock grazing, and watershed alteration activities. Though declines in toad numbers have not been directly linked to habitat alteration, activities that destroy, modify, or curtail habitat likely contribute to the continued decline in toad numbers. The current and future use of water rights in the Southern Rocky Mountains may impact boreal toads. Increased demands on limited water resources can result in water level drops in reservoirs that toads are using. Transferring rights from one user group to another (e.g., agricultural to municipal) also could reduce toad habitat, particularly if dewatering of reservoir sites resulted from these transfers. Additional threats to the boreal toad include a chytrid fungus, which likely caused the boreal toad to decline in the 1970s and continues to cause declines. Based on these threats, we assigned this DPS of boreal toad a listing priority number of 3.

Fishes

Gila chub (*Gila intermedia*)—The following summary is based on information contained in our files, including information from the petition received on June 10, 1998. The Gila chub has been extirpated or reduced in numbers and distribution in the majority of its historical range. Over 70 percent of the Gila chub's habitat has been degraded or destroyed, and much of it is unrecoverable. Of the 15 remaining populations, most are small, isolated, and threatened, and only one population is considered secure. Wetland habitat degradation and loss is a major threat to the Gila chub. Human activities such as groundwater pumping, surface water diversions, impoundments, channelization, improper livestock grazing, vegetation manipulation, agriculture, mining, road building, nonnative species introductions, urbanization, and recreation all contribute to riparian loss and degradation in southern Arizona, thereby, threatening this species. Based on imminent threats of a high magnitude, we assigned this species a listing priority number of 2. Although work on court-ordered section 4 actions have precluded us from issuing a proposed rule to date, despite the fact that this species has a listing priority number of 2, we recently entered into a settlement agreement on October 2, 2001 (*Center for Biological Diversity, et al.* v. *Norton,* Civ. No. 01–2063 (JR) (D.D.C.)) that will require us to deliver by July 31, 2002, a proposed rule to the **Federal Register** for publication.

Arctic grayling, upper Missouri River DPS (*Thymallus arcticus*)—The following summary is based on information contained in our files, including information from the petition received on October 2, 1992. Presently, the only self-sustaining remnant of the indigenous fluvial Arctic grayling population exists in the Big Hole River, estimated to represent 5 percent or less of the historic range for this species in Montana and Wyoming. Reestablishment efforts are underway in four streams within the historic range. The grayling faces threats primarily from a decrease in available habitat as a result of dewatering of streams for irrigation and stock water, ongoing drought conditions, and habitat degradation from dams and reservoirs. Landowners and other interests are implementing actions to ensure adequate water conditions in the Big Hole River. Additionally, predation on or competition with Arctic grayling by nonnative trout are thought to be factors limiting grayling populations. Due to imminent threats of a low to moderate magnitude, we assigned this DPS of Arctic grayling a listing priority number of 9.

Snails

Koster's tryonia snail (*Tryonia kosteri*)—The following summary is based on information contained in our files, including information from the petition received on November 20, 1985. Koster's tryonia snail is an aquatic species known only from North Spring (private land) and four spring/seepage areas on Bitter Lake National Wildlife Refuge in Chaves County, New Mexico. This snail was found at several other springs in the Roswell area, but these habitats are no longer suitable due to groundwater pumping. Koster's tryonia snail is imperilled by local and regional ground water depletion, habitat destruction, direct manipulation of lotic habitat (moving water), surface and ground water pollution such as sewage, pesticides, and oil and gas industry operations. The geographically restricted distribution of Koster's tryonia snail makes the species vulnerable to human-caused or natural events that could destroy a significant portion of the species' remaining populations and habitat. Because of these threats, we assigned this species a listing priority number of 2. Although work on court-ordered section 4 actions have precluded us from issuing a proposed rule to date, despite the fact that this species has a listing priority number of 2, we recently entered into a settlement agreement on October 2, 2001 (*Center for Biological Diversity, et al.* v. *Norton,* Civ. No. 01–2063 (JR) (D.D.C.)), that will require us to deliver by February 6, 2002, a proposed rule to the **Federal Register** for publication.

Pecos assiminea snail (*Assiminea pecos*)—The following summary is based on information contained in our files, including information from the petition received on November 20, 1985. The Pecos assiminea snail is a semiaquatic mollusc known from two spring/seepage areas on Bitter Lake National Wildlife Refuge in Chaves County, New Mexico; Diamond Y Springs complex in Pecos County, Texas; and East Sandia Spring in Reeves County, Texas. This snail was found at other springs in the Roswell, New Mexico, area, but these habitats are no longer suitable due to groundwater pumping. The Pecos assiminea snail is imperilled by habitat destruction, local and regional ground water depletion, direct manipulation of lotic habitat, and surface and ground water pollution, such as sewage, pesticides, and oil and gas industry operations. Steps are needed to protect and maintain the vegetative cover in which the snail lives. Based on imminent threats of a high magnitude, we assigned this species a listing priority of 2. Although work on court-ordered section 4 actions have precluded us from issuing a proposed rule to date, despite the fact that this species has a listing priority number of 2, we recently entered into a settlement agreement on October 2, 2001 (*Center for Biological Diversity, et al.* v. *Norton,* Civ. No. 01–2063 (JR) (D.D.C.)), that will require us to deliver by February 6, 2002, a proposed rule to the **Federal Register** for publication.

Chupadera springsnail (*Pyrgulopsis chupaderae*)—The following summary is based on information contained in our files, including information from the petition received on November 20, 1985. This aquatic species is endemic to Willow Spring on the Willow Spring Ranch (formerly Cienega Ranch) at the south end of the Chupadera Mountains in Socorro County, New Mexico. The Chupadera springsnail has been documented from two hillside groundwater discharges that flow through grazed areas among rhyolitic gravels containing sand, mud, and hydrophytic plants. Regional and local groundwater depletion, springrun dewatering, and riparian habitat degradation represent the principal threats. The survival and recovery of the Chupadera springsnail is contingent upon protection of the riparian corridor immediately adjacent to Willow Spring,

and the availability of perennial, oxygenated flowing water within the species' thermal range. Existing regulatory mechanisms are not sufficient to protect this species. New Mexico State law provides limited protection to the Chupadera springsnail, but this law does not provide for habitat protection. Because these threats are imminent but of a low to moderate magnitude, we assigned this species a listing priority number of 8.

Gila springsnail (*Pyrgulopsis gilae*)—The following summary is based on information contained in our files, including information from the petition received on November 20, 1985. The Gila springsnail is an aquatic species known from 13 populations in New Mexico. The long-term persistence of the Gila springsnail is contingent upon protection of the riparian corridor immediately adjacent to springhead and springrun habitats, thereby ensuring the maintenance of perennial, oxygenated flowing water within the species' required thermal range. Sites on both private and Federal lands are subject to uncontrolled recreational use and livestock grazing (Mehlhop 1993), thus rendering the long-term survival of the Gila springsnail questionable. Natural events such as drought, forest fire, sedimentation, and flooding; wetland habitat degradation by recreational bathing in thermal springs; and poor watershed management practices such as overgrazing and inappropriate silviculture, represent the primary threats to the Gila springsnail. Fire suppression and retardant chemicals have potentially deleterious effects on this species. Existing regulatory mechanisms are not sufficient to protect the Gila springsnail. New Mexico State law provides limited protection to the Gila springsnail, but this law does not provide for habitat protection. Based on these non-imminent threats of a low magnitude, we assigned a listing priority number of 11 to this species.

New Mexico springsnail (*Pyrgulopsis thermalis*)—The following summary is based on information contained in our files, including information from the petition received on November 20, 1985. The New Mexico springsnail is an aquatic species known from only two separate populations associated with a series of spring-brook systems along the Gila River in the Gila National Forest in Grant County, New Mexico. The long-term persistence of the New Mexico springsnail is contingent upon protection of the riparian corridor immediately adjacent to springhead and springrun habitats, thereby ensuring the maintenance of perennial, oxygenated flowing water within the species' required thermal range. While the New Mexico springsnail populations may be stable, the sites inhabited by the species are subject to uncontrolled recreational use and livestock grazing. Wetland habitat degradation via recreational use and overgrazing in or near the thermal springs and/or poor watershed management practices represent the primary threats to the New Mexico springsnail. Natural events such as drought, forest fire, sedimentation, and flooding may further imperil populations. Additionally, fire suppression and retardant chemicals have potentially deleterious effects on this species. Existing regulatory mechanisms are also not sufficient to protect the New Mexico springsnail. New Mexico State law provides limited protection to the New Mexico springsnail, but this law does not provide for habitat protection. Based on these non-imminent threats of a low magnitude, we assigned this species a listing priority number of 11.

Roswell springsnail (*Pyrgulopsis roswellensis*)—The following summary is based on information contained in our files, including information from the petition received on November 20, 1985. The Roswell springsnail is an aquatic species only known from North Spring (private land) and three spring/seepage areas on Bitter Lake National Wildlife Refuge in Chaves County, New Mexico. This snail was found at several other springs in the Roswell area, but these habitats have become unsuitable due to groundwater pumping. The Roswell springsnail is imperilled by local and regional ground water depletion, habitat destruction, direct manipulation of lotic habitat (moving water), surface and ground water pollution (such as sewage), pesticides, and oil and gas industry operations. Existing regulatory mechanisms are not sufficient to protect the Roswell springsnail. New Mexico State law provides limited protection to the Roswell springsnail, but this law does not provide for habitat protection. Due to imminent threats of a high magnitude, we assigned this species a listing priority number of 2. Although work on court-ordered section 4 actions have precluded us from issuing a proposed rule to date, despite the fact that this species has a listing priority number of 2, we recently entered into a settlement agreement on October 2, 2001 (*Center for Biological Diversity, et al.* v. *Norton,* Civ. No. 01–2063 (JR) (D.D.C.)), that will require us to deliver by February 6, 2002, a proposed rule to the **Federal Register** for publication.

Insects

Carson wandering skipper (*Pseudocopaeodes eunus obscurus*)—The following summary is based on information contained in our files, including information from the petition received on November 14, 2000. We believe that this skipper has been extirpated from the Carson Hot Springs site. As a result, this subspecies currently occurs at three locations in two areas: Pyramid and Honey Lakes. Threats at the Pyramid Lake site include grazing and potential future water development. At the two Honey Lake sites, the invasion of nonnative plant species such as whitetop (*Lepidium latifolium*), which outcompetes native nectar plants, threatens the skipper. Grazing in this area may also pose a threat to the skipper's habitat. Additional potential future threats include exportation of water from Honey Lake to other locations. Due to imminent threats of a high magnitude, we assigned this subspecies a listing priority number of 3. Although work on court-ordered section 4 actions have precluded us from issuing a proposed rule to date, despite the fact that this species has a listing priority number of 3, we recently entered into a settlement agreement on October 2, 2001 (*Center for Biological Diversity, et al.* v. *Norton,* Civ. No. 01–2063 (JR) (D.D.C.)), that will require us to deliver by November 23, 2001, a decision on whether to emergency list to the **Federal Register** for publication.

Coral Pink Sand Dunes tiger beetle (*Cicindela limbata albinssima*)—The following summary is based on information contained in our files, including information from the petition received on April 21, 1994. The Coral Pink Sand Dunes (CPSD) tiger beetle is known to occur only at CPSD, about 7 miles west of Kanab, Kane County, in south-central Utah. It is restricted mostly to a small part of the approximately 13-kilometer (8-mile) long dune field, situated at an elevation of about 1,820 meters (6,000 feet). The subspecies' habitat is being adversely impacted by ongoing recreational off-road vehicle (ORV) use. The ORV activity is destroying and degrading the species' habitat, especially the inter-dunal swales used by the larval population. Having the greatest abundance of suitable prey species, the inter-dunal swales are the most biologically productive areas in the CPSD ecosystem. The continued survival of the species depends on the preservation of the species and its habitat at its only breeding reproductive site and the probable need to establish

or reestablish additional reproductive subpopulations in other suitable habitat sites within CPSD. The species population is also vulnerable to overcollecting by professional and hobby tiger beetle collectors, although quantification of this threat is difficult without continuous monitoring of the species population. Based on imminent threats of a low to moderate magnitude, we assigned this subspecies a listing priority number of 9.

Flowering plants

Christ's paintbrush (*Castilleja christii*)—The following summary is based on information contained in our files, including information from the petition received on January 2, 2001. *Castilleja christii* is endemic to subalpine meadow and sagebrush habitats in the upper elevations of the Albion Mountains, Cassia County, Idaho. The single population of this species, which covers only 81 hectares (ha) (200 acres (ac)), is restricted to the summit of Mount Harrison. The population appears to be stable, although the species is threatened by a variety of activities including frequent unauthorized off-road vehicle use that results in erosion of the plant's habitat and mortality of individual plants. Livestock grazing can adversely affect *C. christii* by trampling and/or consuming plants, which results in reduced reproductive success; grazing occurred in the area where *C. christii* exists during 1999, but not in 2000. In addition, road maintenance activities and trampling by hikers potentially impact this species. Because the threats are of a low to moderate magnitude and non-imminent, we assigned this species a listing priority number of 11.

San Fernando Valley spineflower (*Chorizanthe parryi fernandina*)—The following summary is based on information contained in our files, including information from the petition received on December 14, 1999. *Chorizanthe parryi* var. *fernandina* was thought to be extinct, but its rediscovery was disclosed in the late spring of 1999. The plant currently is known from two disjunct localities. The first locality is in the southeastern portion of Ventura County, on a site approved for development, where it was found and identified by consultants employed by the developer. The second is located in southwestern Los Angeles County on a site with approved development plans. As currently planned, it is likely that construction of proposed development will extirpate the first population in Ventura County. It is unclear how the development in Los Angeles will affect that population. The majority of the historical collections of this plant, from the greater Los Angeles metropolitan area, were made from areas where urban, agricultural, and industrial development have replaced native habitats. During the last few decades, numerous field botanists have been unable to locate the species, even where historically recorded, largely due to the alteration and loss of suitable habitat. San Fernando Valley spineflower is also threatened by invasive nonnative plants, including grasses, that potentially fragment suitable habitat; displace it from available habitat; compete for light, water, and nutrients; and reduce survival and establishment. This plant is particularly vulnerable to extinction due to its two isolated populations. Species with few populations and disjunct distributions are vulnerable to naturally occurring, random events. Because of imminent threats of a high magnitude, we assigned a listing priority number of 3 to this plant.

Slick spot peppergrass (*Lepidium papilliferum*)—The following summary is based on information contained in our files, including information from the petition received on April 9, 2001. *Lepidium papilliferum* is an annual or biennial that occurs in sagebrush-steppe habitats at approximately 670 meters (m) (2,200 feet (ft)) to 1,615 m (5,300 ft) elevation in southwestern Idaho. The total amount of currently occupied *L. papilliferum* habitat is less than 31.8 ha (78.4 ac), and the amount of high-quality occupied habitat for this species is less than 1.3 ha (3.3 ac). The documented extirpation rate for this taxon is the highest known of any Idaho rare plant species. This species is threatened by a variety of activities including urbanization, gravel mining, irrigated agriculture, habitat degradation due to cattle and sheep grazing, fire and fire rehabilitation activities, and continued invasion of habitat by nonnative plant species. Because the majority of populations are extremely small and existing habitat is fragmented by agricultural conversion, fire, grazing, roads, and urbanization, local extirpation is a threat to this species. Based on immediate threats of a high magnitude, we assigned this species a listing priority number of 2.

White River beardtongue (*Penstemon scariosus albifluvis*)—The following summary is based on information contained in our files, including information from the petition received on October 27, 1983. The White River beardtongue is restricted to calcareous soils derived from oil shale barrens of the Green River Formation in the Uinta Basin of northeastern Utah and adjacent Colorado. Most of the occupied habitat of the White River beardtongue is within developed and expanding oil and gas fields. Several wells and access roads are within the species' occupied habitat. The location of the species' habitat exposes it to destruction from off-road vehicle use, and road, pipeline, and well-site construction in connection with oil and gas development. With such a small population and limited occupied habitat, any destruction, modification, or curtailment of the habitat would have a highly negative impact on the species. Additionally, the species is heavily grazed by wildlife and livestock and is vulnerable to livestock trampling. Currently, no Federal or State laws specifically protect the White River beardtongue. Based on non-imminent threats of a high magnitude, we assigned this subspecies a listing priority number of 6.

Tahoe yellow cress (*Rorippa subumbellata*)—The following summary is based on information contained in our files, including information from the petition received on December 27, 2000. Tahoe yellow cress is a small, perennial herb known only from the shores of Lake Tahoe in California and Nevada. Based on presence/absence information, it has been determined that the Tahoe yellow cress has been extirpated from 10 of 52 historic locations. Tahoe yellow cress occurs in a dynamic environment affected by both natural processes and human activities. Under natural conditions, Tahoe yellow cress is apparently tolerant of the dynamic nature of its habitat and is adapted for survival in a disturbance regime. However, due to the combination of unnatural lake level fluctuation due to dam operations and other human activities, habitat conditions are no longer considered natural. Heavy recreational use of the beaches may result in the direct loss of individual plants as well as the degradation of habitat through compaction and mixing of sandy substrates. Based on imminent threats of a high magnitude, we assigned this species a listing priority number of 2.

Petition To Reclassify Species Already Listed

We have also previously made warranted but precluded findings on five petitions that sought to reclassify to endangered status species already listed as threatened. Because these species are already listed, they are not technically candidates for listing and are not included in Table 1. However, this notice also constitutes the recycled petition findings for these species. We find that reclassification to endangered status is currently warranted but

precluded by work identified above (see Petition of a Candidate Species) for the:

(1) North Cascades ecosystem grizzly bear (*Ursus arctos horribilis*) DPS (Region 6) (see 64 FR 30453 for a discussion on why reclassification is warranted);

(2) Cabinet-Yaak grizzly bear DPS (Region 6) (see 64 FR 26725 for a discussion on why reclassification is warranted);

(3) Selkirk grizzly bear DPS (Region 6) (see 64 FR 26725 for a discussion on why reclassification is warranted);

(4) Spikedace (*Meda fulgida*) (Region 2) (see 59 FR 35303 for a discussion on why reclassification is warranted); and

(5) Loach minnow (*Tiaroga cobitis*) (Region 2) (see 59 FR 35303 for a discussion on why reclassification is warranted).

Progress in Revising the Lists

As described in section 4(b)(3)(B)(iii) of the Act, in order for us to make a warranted but precluded finding on a petitioned action, we must be making expeditious progress to add qualified species to the Lists and to remove from the Lists species for which the protections of the Act are no longer necessary. This notice describes our progress in revising the lists during the last two fiscal years since our October 25, 1999 publication of the last CNOR. We intend to publish these descriptions annually.

Our progress in listing and delisting qualified species during fiscal years 1999 and 2000 is represented by the publication in the **Federal Register** of final listing actions for 52 species, proposed listing actions for 33 species, final delisting actions for 2 species, and proposed delisting actions for 3 species. In addition, we proposed critical habitat for 174 listed species, and finalized critical habitat for 21 listed species. Given the Service's limited budget for implementing section 4, these achievements constitute expeditious progress.

Request for Information

We request you submit any further information on the species named in this notice as soon as possible or whenever it becomes available. We are particularly interested in any information:

(1) Indicating that we should add a species to the list of candidate species;

(2) Indicating that we should remove a species from candidate status;

(3) Recommending areas that we should designate as critical habitat for a species, or indicating that designation of critical habitat would not be prudent for a species;

(4) Documenting threats to any of the included species;

(5) Describing the immediacy or magnitude of threats facing candidate species;

(6) Pointing out taxonomic or nomenclature changes for any of the species;

(7) Suggesting appropriate common names; or

(8) Noting any mistakes, such as errors in the indicated historical ranges.

Submit your comments regarding a particular species to the Regional Director of the Region identified as having the lead responsibility for that species. The regional addresses follow:

Region 1. California, Hawaii, Idaho, Nevada, Oregon, Washington, American Samoa, Guam, and Commonwealth of the Northern Mariana Islands.

Regional Director (TE), U.S. Fish and Wildlife Service, Eastside Federal Complex, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181 (503/231–6158).

Region 2. Arizona, New Mexico, Oklahoma, and Texas.

Regional Director (TE), U.S. Fish and Wildlife Service, 500 Gold Avenue SW., Room 4012, Albuquerque, New Mexico 87102 (505/248–6920).

Region 3. Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin.

Regional Director (TE), U.S. Fish and Wildlife Service, Bishop Henry Whipple Federal Building, One Federal Drive, Fort Snelling, Minnesota 55111–4056 (612/713–5334).

Region 4. Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Puerto Rico, and the U.S. Virgin Islands.

Regional Director (TE), U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (404/679–4156).

Region 5. Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia.

Regional Director (TE), U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035–9589 (413/253–8615).

Region 6. Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming.

Regional Director (TE), U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225–0486 (303/236–7400).

Region 7. Alaska.

Regional Director (TE), U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503–6199 (907/786–3505).

Our practice is to make comments, including names and home addresses of respondents, available for public inspection. Individual respondents may request that we withhold their home address from the public record, which we will honor to the extent allowable by law. In some circumstances, we can also withhold from the public record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this request prominently at the beginning of your comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Authority

This notice of review is published under the authority of the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: October 17, 2001.

Marshall P. Jones, Jr.,

Acting Director, Fish and Wildlife Service.

TABLE 1. CANDIDATE NOTICE OF REVIEW (ANIMAL AND PLANT)

Status		Lead Region	Common name	Scientific name	Family	Historic range
Category	Priority					
Mammals						
PT	3	R1	Bat, Mariana fruit	*Pteropus mariannus mariannus*.	Pteropodidae	Western Pacific Ocean U.S.A. (GU, MP).
C*	3	R1	Bat, sheath-tailed (American Samoa, Aguijan DPS).	*Emballonura semicaudata*.	Emballonuridae	U.S.A. (AS, GU, MP), Caroline Islands .
C*	3	R1	Fox, island (Santa Catalina, Santa Cruz, San Miguel, Santa Rosa Islands).	*Urocyon littoralis catalinae, U. l. santacruzae, U. l. littoralis, and U. l. santarosae*.	Canidae	U.S.A. (California).
C*	3	R7	Otter, northern sea (Aleutian Islands DPS).	*Enhydra lutris kenyoni*.	Mustelidae	U.S.A. southwest AK).
C	6	R1	Pocket Gopher, Mazama	*Thomomys mazama*	Geomyidae	U.S.A. (Washington).
C*	8	R6	Prairie dog, black-tailed	*Cynomys ludovicianus*.	Sciuridae	U.S.A. (AZ, CO, KS, MT, NE, NM, ND, OK, SD, TX, WY), Canada, Mexico.
PE	3	R1	Shrew, Buena Vista Lake	*Sorex ornatus relictus*.	Soricidae	U.S.A. (CA).
C	6	R1	Squirrel, Coachella Valley round-tailed.	*Spermophilus tereticaudus chlorus*.	Soricidae	U.S.A. (CA).
C*	3	R1	Squirrel, Southern Idaho ground	*Spermophilus brunneus endemicus*.	Sciuridae	U.S.A. (ID).
C*	2	R1	Squirrel, Washington ground	*Spermophilus washingtoni*.	Sciuridae	U.S.A. (WA, OR).
Birds						
C	6	R1	Crake, spotless	*Porzana tabuensis*	Rallidae	U.S.A. (AS), Figi, Marquesas, Polynesia, Philippines, Australia, Society Islands, Tonga, Western Samoa.
C	5	R1	Creeper, Kauai	*Oreomystis bairdi*	Fringillidae	U.S.A. (HI).
C*	6	R1	Cuckoo, yellow-billed (Western cont. U.S. DPS).	*Coccyzus americanus*.	Cucilidae	U.S.A. (AZ, CA, CO, ID, MT, NM, NV, OR, TX, UT, WA, WY)
C	6	R1	Dove, friendly ground	*Gallicolumba stairi*	Columbidae	U.S.A. (AS), Fiji, Tonga, Western Samoa.
C	6	R1	Dove, many-colored fruit	*Ptilinopus perousii perousii*.	Columbidae	U.S.A. (AS).
C*	5	R6	Grouse, Gunnison sage	*Centrocercus minimus*.	Phasianidae	U.S.A. (AZ, CO, KS, OK, NM, UT).
C*	9	R1	Grouse, western sage (Washington DPS = Columbia basin).	*Centrocercus urophasianus phaios*.	Phasianidae	U.S.A. (WA).
C	6	R1	Horned lark, streaked	*Eremophila alpestris strigata*.	Alaudidae	U.S.A. (WA, OR), Canada (BC).
PT	2	R6	Plover, mountain	*Charadrius montanus*	Charadriidae	U.S.A. (western), Canada, Mexico.
C*	8	R2	Prairie-chicken, lesser	*Tympanuchus pallidicinctus*.	Phasianidae	U.S.A. (CO, KA, NM, OK, TX).
C*	3	R1	Storm-petrel, band-rumped (Hawaii DPS).	*Oceanodroma castro*	Hydrobatidae	U.S.A. (HI).
C	5	R4	Warbler, elfin woods	*Dendroica angelae*	Emberizidae	U.S.A. (PR).
PE	2	R1	White-eye, Rota bridled	*Zosterops rotensis*	Zosteropidae	U.S.A. (MP).
Reptiles						
C	2	R2	Lizard, sand dune lizard	*Sceloporus arenicolus*.	Iguanidae	U.S.A. (TX, NM).
C	9	R3	Snake, eastern Massasauga	*Sistrurus catenatus catenatus*..	Viperidae U.S.A. (IA, IL, IN, MI, MO, MN, NY, OH, PA, WI), Canada (Ont.)..	
C	6	R4	Snake, black pine	*Pituophis*	Colubridae melanoleucus ssplodingi..	U.S.A. (AL, LA, MS).

TABLE 1. CANDIDATE NOTICE OF REVIEW (ANIMAL AND PLANT)—Continued

Status		Lead Region	Common name	Scientific name	Family	Historic range
Category	Priority					
C*	5	R4	Snake, Louisiana pine	*Pituophis ruthveni*	Colubridae	U.S.A. (LA, TX).
C*	5	R2	Turtle, Cagle's map	*Graptemys caglei*	Emydidae	U.S.A. (TX).
C	3	R2	Turtle, Sonoyta mud	*Kinosternon sonoriense longifemorale*.	Kinosternidae	U.S.A. (AZ), Mexico.
Amphibians						
PT	2	R2	Frog, Chiricahua leopard	*Rana chiricahuensis*	Ranidae	U.S.A. (AZ, NM), Mexico.
C*	3	R1	Frog, Columbia spotted (Great Basin DPS).	*Rana luteiventris*	Ranidae	U.S.A. (ID, NV, OR).
PE	2	R4	Frog, Mississippi gopher (wherever found west of Mobile and Tombigbee Rivers in AL, MS, and LA.	*Rana capito sevosa*	Ranidae	U.S.A. (AL, LA, MS).
PE	N/A	R1	Frog, mountain yellow-legged (southern California DPS).	*Rana muscosa*	Ranidae	U.S.A. (CA, NV) including San Diego, Orange, Riverside, San Bernardino, and Los Angeles Counties.
C*	3	R1	Frog, Oregon spotted (West Coast DPS).	*Rana pretiosa*	Ranidae	U.S.A (CA, OR, WA), Canada (BC).
C	6	R4	Hellbender, Ozark	*Cryptobranchus alleganiensis bishopi*.	Crytobranchidae	U.S.A. (AR, MO).
C*	5	R1	Salamander tiger California (entire except where listed).	*Ambystoma californiense*.	Ambystomatidae	U.S.A. (CA).
C	2	R2	Salamander, Georgetown	*Eurycea naufragia*	Plethodontidae	U.S.A. (TX).
C*	3	R6	Toad, boreau (Southern Rocky Mountains DPS).	*Bufo boreas boreas*	Bufonidae	U.S.A. (CO, NM, WY).
C	5	R4	Waterdog, black warrior	*Necturus alabamensis*.	Proteidae	U.S.A. (AL).
Fishes						
PE	3	R1	Chub, Cowhead Lake tui	*Gila bicolor vaccaceps*.	Cyprinidae	U.S.A. (CA).
C*	2	R2	Chub, Gila	*Gila intermedia*	Cyprinidae	U.S.A. (AZ, NM), Mexico.
C	5	R6	Darter, Arkansas	*Etheostoma cragini*	Percidae	U.S.A. (AR, CO, KS, MO, OK).
C	6	R4	Darter, Cumberland johnny	*Etheostoma nigrum susanae*.	Percidae	U.S.A. (KY, TN).
PE	N/A	R4	Darter. Vermilion	*Etheostoma chermocki*.	Percidae	U.S.A. (AL).
C	2	R4	Darter, yellowcheek	*Etheostoma moorei*	Percidae	U.S.A. (AK).
C	5	R4	Darter. Pearl	*Percina aurora*	Percidae	U.S.A. (LA, MS)
C*	9	R6	Grayling, Arctic (upper Missouri River DPS).	*Thymallus arcticus*	Salmonidae	U.S.A. (MT, WY)
C	3	R2	Sucker, Zuni bluehead	*Catostomus discobolus yarrowi*.	Catostomidae	U.S.A. (AZ, NM)
PT	6	R1	Trout, coastal cutthroat (southwestern WA/Columbia River DPS).	*Oncorhynchus clarki clarki*.	Salmonidae	U.S.A. (AK, CA, OR, WA), Canada.
PT	N/A	R1	Trout, Dolly Varden	*Salvelinus malma*	Salmonidae	U.S.A. (AK, OR, WA), Canada, East Asia.
Clams						
C	5	R4	Clubshell, Alabama	*Pleurobema troshelianum*.	Unionidae	U.S.A. (AL, GA, TN).
C	5	R4	Clubshell, painted	*Pleurobema chattanoogaense*.	Unionidae	U.S.A. (AL, GA, TN).
C	2	R2	Hornshell, Texas	*Popenaias popei*	Unionidae	U.S.A. (NM, TX), Mexico.
C	5	R4	Kidneyshell, fluted	*Ptychobranchus subtentum*.	Unionidae	U.S.A. (AL, KY, TN, VA.
C	5	R4	Mucket, Neosho	*Lampsilis rafinesqueana*.	Unionidae	U.S.A. (AR, KS, MO, OK).
C	2	R4	Pearlshell, Alabama	*Margaritifera marrianae*.	Margaritiferidae	U.S.A. (AL).
C	5	R4	Pearlymussel, slabside	*Lexingtonia dolabelloides*.	Unionidae	U.S.A. (AL, KY, TN, VA).

TABLE 1. CANDIDATE NOTICE OF REVIEW (ANIMAL AND PLANT)—Continued

Status		Lead Region	Common name	Scientific name	Family	Historic range
Category	Priority					
C	5	R4	Pigtoe, Georgia	*Pleurobema hanleyanum*.	Unionidae	U.S.A. (AL, GA, TN).
			Snails			
C	1	R3	Cavesnail, Tumbling Creek	*Antrobia culveri*	Hydrobiidae	U.S.A. (MO).
C	9	R6	Mountainsnail, Ogden Deseret	*Oreohelix, perpherica wasatchensis*.	Oreohelicidae	U.S.A. (UT).
C	2	R6	Pondsnail, Bonneville	*Stagnicola bonnevillensis*.	Lymnaeidae	U.S.A. (UT).
C	5	R4	Rocksnail, Georgia	*Leptoxis downei*	Pleuroceridae	U.S.A. (GA, AL).
C	2	R1	Sisi	*Ostodes strigatus*	Potaridae	U.S.A. (AS).
C	2	R2	Snail, Diamond Y Spring	*Tryonia adamantina*	Hydrobiidae	U.S.A. (TX).
C	2	R1	Snail, fragile tree	*Samoana fragilis*	Partulidae	U.S.A. (GU, MP).
C	2	R1	Snail, Guam tree	*Partula radiolata*	Partulidae	U.S.A. (GU).
C	2	R1	Snail, Humped tree	*Partula gibba*	Partulidae	U.S.A. (GU, MP).
C*	2	R2	Snail, Koster's tryonia	*Tryonia kosteri*	Hydrobiidae	U.S.A. (NM).
C	2	R1	Snail, Lanai tree	*Partulina semicarinata*.	Achatinellidae	U.S.A. (HI).
C	2	R1	Snail, Lanai tree	*Partulina variabilis*	Achatinellidae	U.S.A. (HI).
C	2	R1	Snail, Langford's tree	*Partula langfordi*	Partulidae	U.S.A. (MP).
C*	2	R2	Snail, Pecos	*Assiminea pecos*	Assimineidae	U.S.A. (NM, TX), Mexico.
C	2	R2	Snail, Phantom cave	*Cochliopa texana*	Hydrobiidae	U.S.A. (TX).
C	2	R1	Snail, Tutuila tree	*Eua zebrina*	Partulidae	U.S.A. (AS).
C*	8	R2	Springsnail, Chupadera	*Pyrgulopsis chupaderae*.	Hydrobiidae	U.S.A. (NM).
C*	11	R2	Springsnail, Gila	*Pyrgulopsis gilae*	Hydrobiidae	U.S.A. (NM).
C	2	R2	Springsnail, Gonzales	*Tryonia circumtriata (=stocktonensis)*.	Hydrobiidae	U.S.A. (TX).
C	5	R2	Springsnail, Huachuca	*Pyrgulopsis thompsoni*.	Hydrobiidae	U.S.A. (AZ), Mexico.
C*	11	R2	Springsnail, New Mexico	*Pyrgulopsis thermalis*	Hydrobiidae	U.S.A. (NM).
C	2	R2	Springsnail, Page	*Pyrgulopsis morrisoni*	Hydrobiidae	U.S.A. (AZ).
C	2	R2	Springsnail, Phantom	*Tryonia cheatumi*	Hydrobiidae	U.S.A. (TX).
C*	2	R2	Springsnail, Roswell	*Pyrgulopsis roswellensis*.	Hydrobiidae	U.S.A. (NM).
C	2	R2	Springsnail, Three Forks	*Pyrgulopsis trivialis*	Hydrobiidae	U.S.A. (AZ).
C	5	R1	Tree snail, Newcomb's	*Newcombia cumingi*	Achatinellidae	U.S.A. (HI).
			Insects			
C	5	R5	Beetle, Holsinger's cave	*Pseudanophthalmus holsingeri*.	Carabidae	U.S.A. (VA).
C	11	R6	Beetle, warm springs zaitzevian riffle.	*Zaitzevia thermae*	Elmidae	U.S.A. (MT).
C	2	R1	Bug, Wekiu	*Nysius wekiuicola*	Lygaeidae	U.S.A. (HI).
C	3	R1	Butterfly, Mariana eight-spot	*Hypolimnas octucula mariannensis*.	Nymphalidae	U.S.A. (GU, MP).
C	2	R1	Butterfly, Mariana wandering	*Vagrans egestina*	Nymphalidae	U.S.A. (GU, MP).
PE	N/A	R2	Butterfly, Sacramento Mountains checkerspot.	Euphydryas anicia cloudcrofti.	Nymphalidae	U.S.A. (NM).
C	6	R1	Butterfly, Whulge checkerspot	*Euphydryas editha taylor*.	Nymphalidae	U.S.A. (OR, WA) Canada (BC).
C	5	R4	Caddisfly, Sequatchie	*Glyphopsyche sequatchie*.	Limnephilidae	U.S.A. (TN).
C	5	R4	Cave beetle, beaver	*Pseudanophthalmus major*.	Carabidae	U.S.A. (KY).
C	5	R4	Cave beetle, Clifton	*Pseudanophthalmus caecus*.	Carabidae	U.S.A. (KY).
C	5	R4	Cave beetle, icebox	*Pseudanophthalmus frigidus*.	Carabidae	U.S.A. (KY).
C	5	R4	Cave beetle greater Adams	*Pseudanophthalmus pholeter*.	Carabidae	U.S.A. (KY).
C	5	R4	Cave beetle, inquirer	*Pseudanophthalmus inquistor*.	Carabidae	U.S.A. (TN).
C	5	R4	Cave beetle, lesser Adams	*Pseudanophthalmus cataryctos*.	Carabidae	U.S.A. (KY).
C	5	R4	Cave beetle, Louisville	*Pseudanophthalmus troglodytes*.	Carabidae	U.S.A. (KY).

TABLE 1. CANDIDATE NOTICE OF REVIEW (ANIMAL AND PLANT)—Continued

Status		Lead Region	Common name	Scientific name	Family	Historic range
Category	Priority					
C	5	R4	Cave beetle, surprising	*Pseudanophthalmus inexpectatus*.	Carabidae	U.S.A. (KY).
C	5	R4	Cave beetle, Tatum	*Pseudanophthalmus parvus*.	Carabidae	U.S.A. (KY).
C	9	R1	Damselfly, blackline Hawaiian	*Megalagrion nigrohamatum nigrolineatum*.	Coenagrionidae	U.S.A. (HI).
C	2	R1	Damselfly, crimson Hawaiian	*Megalagrion leptodemus*.	Coenagrionidae	U.S.A. (HI).
C	2	R1	Damselfly, flying earwig Hawaiian.	*Megalagrion nesiotes*	Coenagrionidae	U.S.A. (HI).
C	2	R1	Damselfly, oceanic Hawaiian	*Megalagrion oceanicum*.	Coenagrionidae	U.S.A. (HI).
C	8	R1	Damselfly, orangeblack Hawaiian.	*Megalagrion xanthomelas*.	Coenagrionidae	U.S.A. (HI).
C	2	R1	Damselfly, Pacific Hawaiian	*Megalagrion pacificum*.	Coenagrionidae	U.S.A. (HI).
C	5	R1	Gall fly, Po'olanui	*Phaeogramma sp.*	Tephritidae	U.S.A. (HI).
C	1	R1	Moth, fabulous green sphinx	*Tinostoma smaragditis*.	Sphingidae	U.S.A. (HI).
PE	2	R1	Pomace fly, [unnamed]	*Drosophila aglaia*	Drosophilidae	U.S.A. (HI).
C	2	R1	Pomace fly, [unnamed]	*Drosophila attigua*	Drosophilidae	U.S.A. (HI).
C	2	R1	Pomace fly, [unnamed]	*Drosophila Digressa*	Drosophilidae	U.S.A. (HI).
PE	2	R1	Pomace fly, [unnamed]	*Drosophila heteroneura*.	Drosophilidae	U.S.A. (HI).
PE	2	R1	Pomace fly, [unnamed]	*Drosophila montgomeryi*.	Drosophilidae	U.S.A. (HI).
PE	2	R1	Pomace fly, [unnamed]	*Drosophila mulli*	Drosophilidae	U.S.A. (HI).
PE	2	R1	Pomace fly, [unnamed]	*Drosophila musaphila*	Drosophilidae	U.S.A. (HI).
PE	2	R1	Pomace fly, [unnamed]	*Drosophila neoclavisetae*.	Drosophilidae	U.S.A. (HI).
PE	2	R1	Pomace fly, [unnamed]	*Drosophila obatai*	Drosophilidae	U.S.A. (HI).
PE	2	R1	Pomace fly, [unnamed]	*Drosophila substenoptera*.	Drosophilidae	U.S.A. (HI).
PE	2	R1	Pomace fly, [unnamed]	*Drosophila tarphytrichia*.	Drosophilidae	U.S.A. (HI).
PE	2	R1	Pomace fly, [unnamed]	*Drosophila hemipeza*	Drosophilidae	U.S.A. (HI).
PE	2	R1	Pomace fly, [unnamed]	*Drosophila ochrobasis*.	Drosophilidae	U.S.A. (HI).
PE	2	R1	Pomace fly, [unnamed]	*Drosophila differens*	Drosophilidae	U.S.A. (HI).
C*	3	R1	Skipper, Carson wandering	*Pseudocopaeodes eunus obscurus*.	Hesperiidae	U.S.A. (CA, NV).
C	5	R1	Skipper, Mardon	*Polites mardon*	Hesperiidae	U.S.A. (CA, OR, WA).
C*	9	R6	Tiger beetle, Coral Pink sand dunes.	*Cindelidae limbata albinssima*.	Cicindela	U.S.A. (UT).
C	5	R4	Tiger beetle, highlands	*Cicindela highlandensis*.	Cicindelidae	U.S.A. (FL).
C	3	R6	*Tiger beetle, Salt Creek*	*Cicindela nevadica lincolniana*.	Cicindelidae	U.S.A. (NE).
Arachnids						
C	2	R2	*Meshweaver, Warton cave*	*Cicurina wartonia*	Dictynidae	U.S.A. (TX).
Crustaceans						
C	11	R4	Crayfish, Camp Shelby burrowing.	*Fallicambarus gordoni*.	Cambaridae	U.S.A. (MS).
C	2	R1	Shrimp, anchialine pool	*Metabetaeus lohena*	Alpheidae	U.S.A. (HI).
C	2	R1	Shrimp, anchialine pool	*Antecaridina lauensis*	Atyidae	U.S.A. (HI), Mozambique, Saudi Arabia, Japan.
C	2	R1	Shrimp, anchialine pool	*Calliasmata pholidota*	Alpheidae	U.S.A. (HI), Funafuti Atol, Saudi Arabia, Sinai Penninsula, Tuvalu.
C	2	R1	Shrimp, anchialine pool	*Palaemonella burnsi*	Palaemonidae	U.S.A. (HI).
C	2	R1	Shrimp, anchialine pool	*Procaris hawaiana*	Procarididae	U.S.A. (HI).
C	2	R1	Shrimp, anchialine pool	*Vetericaris chaceorum*.	Procaridae	U.S.A. (HI).

TABLE 1. CANDIDATE NOTICE OF REVIEW (ANIMAL AND PLANT)—Continued

Status		Lead Region	Common name	Scientific name	Family	Historic range
Category	Priority					
C	5	R4	Shrimp, troglobitic groundwater	*Typhlatya monae*	Atyidae	U.S.A. (PR), Barbuda, Dominican Republic.
			Flowering Plants			
C	11	R1	Sand-verbena, Ramshaw Meadows.	*Abronia alpina*	Nyctaginaceae	U.S.A. (CA).
PE	N/A	R1	Ambrosia, San Diego	*Ambrosia pumila*	Asteraceae	U.S.A. (CA), Mexico.
C	11	R4	Rockcress, Georgia	*Arabis georgiana*	Brassicaceae	U.S.A. (AL, GA).
C	11	R4	Silverbrush, Blodgett's	*Argythamnia blodgettii*.	Euphorbiaceae	U.S.A. (FL).
C	3	R1	Wormwood, Northern	*Artemisia campestris wormskioldii*.	Asteraceae	U.S.A. (OR, WA).
C	2	R1	Paìniu	*Astelia waialealae*	Liliaceae	U.S.A. (HI).
C	5	R4	Aster, Georgia	*Aster georgianus*	Asteraceae	U.S.A. (AL, FL, GA, NC, SC).
C	8	R6	Milk-vetch, horseshoe	*Astragalus equisolensis*.	Fabaceae	U.S.A. (UT).
C	8	R6	Milk-vetch, Sleeping Ute	*Astragalus tortipes*	Fabaceae	U.S.A. (CO).
C	5	R1	Ko'oko'olau	*Bidens amplectens*	Asteraceae	U.S.A. (HI).
C	6	R1	Ko'oko'olau	*Bidens campylotheca pentamera*.	Asteraceae	U.S.A. (HI).
C	3	R1	Ko'oko'olau	Bidens campylotheca waihoiensis.	Asteraceae	U.S.A. (HI).
C	8	R1	Ko'oko'olau	*Bidens conjuncta*	Asteraceae	U.S.A. (HI).
C	6	R1	Ko'oko'olau	*Bidens micrantha ctenophylla*.	Asteraceae	U.S.A. (HI).
C	5	R4	Brickell-bush, Florida	*Brickellia mosieri*	Asteraceae	U.S.A. (FL).
C	5	R1	Reedgrass, [unnamed]	*Calamagrostis expansa*.	Poaceae	U.S.A. (HI).
C	5	R1	Reedgrass, [unnamed]	*Calamagrostis hillebrandii*.	Poaceae	U.S.A. (HI).
C	5	R4	No common name	*Calliandra locoensis*	Mimosaceae	U.S.A. (PR).
C	5	R4	No common name	*Calyptranthes estremerae*.	Myrtaceae	U.S.A. (PR).
C	5	R1	Àwikiwiki	*Canavalia napaliensis*.	Fabaceae	U.S.A. (HI).
C	2	R1	Àwikiwiki	*Canavalia pubescens*	Fabaceae	U.S.A. (HI).
PE	5	R4	Sedge, golden	*Carex lutea*	Cyperaceae	U.S.A. (NC).
C	8	R6	Paintbrush, Aquarius	*Castilleja aquariensis*	Scrophulariaceae.	U.S.A. (UT).
C*	11	R1	Paintbrush, Christ's	*Castilleja christii*	Scrophulariaceae.	U.S.A. (ID).
C	6	R4	Pea, Big Pine partridge	*Chamaecrista lineata keyensis*.	Fabaceae	U.S.A. (FL).
C	6	R4	Sandmat, pineland	*Chamaesyce deltoidea pinetorum*.	Euphorbiaceae	U.S.A. (FL).
C	6	R4	Spurge, wedge	*Chamaesyce deltoidea serpyllum*.	Euphorbiaceae	U.S.A. (FL).
C	5	R1	Àkoko	*Chamaesyce eleanoriae*.	Euphorbiaceae	U.S.A. (HI).
C	6	R1	Àkoko	*Chamaesyce remyi kauaiensis*.	Euphorbiaceae	U.S.A. (HI).
C	6	R1	Àkoko	*Chamaesyce remyi remyi*.	Euphorbiaceae	U.S.A. (HI).
C	5	R1	Papala	*Charpentiera densiflora*.	Amaranthaceae	U.S.A. (HI).
C*	3	R1	Spineflower, San Fernando Valley.	*Chorizanthe parryi fernandina*.	Polygonaceae	U.S.A. (CA).
C	5	R4	Thoroughwort, Cape Sable	*Chromolaena frustata*	Asteraceae	U.S.A. (FL).
C	2	R4	No common name	*Cordia rupicola*	Boraginaceae	U.S.A. (PR), Anegada.
C	2	R1	Haha	*Cyanea asplenifolia*	Campanulaceae	U.S.A. (HI).
C	5	R1	Haha	*Cyanea calycina*	Campanulaceae	U.S.A. (HI).
C	2	R1	Haha	*Cyanea eleeleensis*	Campanulaceae	U.S.A. (HI).
C	2	R1	Haha	*Cyanea kuhihewa*	Campanulaceae	U.S.A. (HI).
C	5	R1	Haha	*Cyanea kunthiana*	Campanulaceae	U.S.A. (HI).
C	5	R1	Haha	*Cyanea lanceolata*	Campanulaceae	U.S.A. (HI).
C	2	R1	Haha	*Cyanea obtusa*	Campanulaceae	U.S.A. (HI).
C	5	R1	Haha	*Cyanea tritomantha*	Campanulaceae	U.S.A. (HI).
C	2	R1	Haìwale	Cyrtandra filipes	Gesneriaceae	U.S.A. (HI).

TABLE 1. CANDIDATE NOTICE OF REVIEW (ANIMAL AND PLANT)—Continued

Status		Lead Region	Common name	Scientific name	Family	Historic range
Category	Priority					
C	5	R1	Haìiwale	*Cyrtandra kaulantha*	Gesneriaceae	U.S.A. (HI).
C	5	R1	Haìiwale	*Cyrtandra oenobarba*	Gesneriaceae	U.S.A. (HI).
C	2	R1	Haìiwale	*Cyrtandra oxybapha*	Gesneriaceae	U.S.A. (HI).
C	2	R1	Haìiwale	*Cyrtandra sessilis*	Gesneriaceae	U.S.A. (HI).
C	6	R4	Prairie-clover, Florida	*Dalea carthagenensis floridana*.	Fabaceae	U.S.A. (FL).
C	5	R4	Crabgrass, Florida pineland	*Digitaria pauciflora*	Poaceae	U.S.A. (FL).
C	6	R1	Na'ena'e	*Dubautia imbricata imbricata*.	Asteraceae	U.S.A. (HI).
C	3	R1	Na'ena'e	*Dubautia plantaginea magnifolia*.	Asteraceae	U.S.A. (HI).
C	5	R1	Na'ena'e	*Dubautia waialealae*	Asteraceae	U.S.A. (HI).
C	6	R2	Cacuts, acuna	*Echinomastus erectocentrus acunensis*.	Cactaceae	U.S.A. (AZ), Mexico.
C	11	R1	Daisy, basalt	*Erigeron basalticus*	Asteraceae	U.S.A. (WA).
C	5	R2	Fleabane, Lemmon	*Erigeron lemmonii*	Asteraceae	U.S.A. (AZ).
C	5	R1	Desert-buckwheat, Umtanum	*Eriogonum codium*	Polygonaceae	U.S.A. (WA).
C	5	R1	Buckwheat, Red Mountain	*Eriogonum kelloggii*	Polygonaceae	U.S.A. (CA).
C	5	R1	No common name	*Festuca hawaiiensis*	Poaceae	U.S.A. (HI).
C	11	R2	Fescue, Guadalupe	*Festuca ligulata*	Poaceae	U.S.A. (TX), Mexico.
C	5	R1	Nanu	*Gardenia remyi*	Rubiaceae	U.S.A. (HI).
C	5	R1	Nohoanu	*Geranium hanaense*	Geraniaceae	U.S.A. (HI).
C	8	R1	Nohoanu	*Geranium hillebrandii*	Geraniaceae	U.S.A. (HI).
C	2	R1	Nohoanu	*Geranium kauaiense*	Geraniaceae	U.S.A. (HI).
C	11	R6	Alice-flower, wonderland	*Gilia caespitosa*	Polemoniaceae	U.S.A. (UT).
C	5	R4	No common name	*Gonocalyx concolor*	Ericaceae	U.S.A. (PR).
PE	N/A	R1	Stickseed, showy	*Hackelia venusta*	Boraginaceae	U.S.A. (WA).
C	5	R1	Kampuaàa	*Hedyotis fluviatilis*	Rubiaceae	U.S.A. (HI).
C	5	R4	Sunflower, whorled	*Helianthus verticillatus*.	Asteraceae	U.S.A. (AL, GA, TN).
C	5	R2	Rose-mallow, Neches River	*Hibiscus dasycalyx*	Malvaceae	U.S.A. (TX).
C	6	R4	Indigo, Florida	*Indigofera mucronata keyensis*.	Fabaceae	U.S.A. (FL).
C	3	R1	hè	*Joinvillea ascendens ssp.* ascendens.	Joinvilleaceae	U.S.A. (HI).
C	5	R1	Hulumoa	*Korthalsella degeneri*	Viscaceae	U.S.A. (HI).
C	5	R1	Kamakahala	*Labordia helleri*	Loganiaceae	U.S.A. (HI).
C	5	R1	Kamakahala	*Labordia pumila*	Loganiaceae	U.S.A. (HI).
C	5	R1	No common name	*Lagenifera erici*	Asteraceae	U.S.A. (HI).
C	5	R1	No common name	*Lagenifera helenae*	Asteraceae	U.S.A. (HI).
C	5	R4	Gladecress, [unnamed]	*Leavenworthia crassa*.	Brassicaceae	U.S.A. (AL).
C	2	R2	Gladecress, Texas golden	*Leavenworthia texana*.	Brassicaceae	U.S.A (TX).
C*	2	R1	Peppergrass, Slick spot	*Lepidium papilliferum*	Brassicaceae	U.S.A. (ID).
C	5	R4	Bladderpod, Short's	*Lesquerella globosa*	Brassicaceae	U.S.A. (IN, KY, TN).
C	5	R1	Bladderpod, White Bluffs	*Lesquerella tuplashensis*.	Brassicaceae	U.S.A. (WA).
PE	3	R1	Meadowfoam, large-flowered wooly.	*Limnanthes floccosa grandiflora*.	Limnanthaceae	U.S.A. (OR).
C	2	R4	Flax, sand	*Linum arenicola*	Linaceae	U.S.A. (FL).
C	3	R4	Flax, Carter's small-flowered	*Linum carteri carteri*	Linaceae	U.S.A. (FL).
PE	2	R1	Lomatium Cook's	*Lomatium cookii*	Apiaceae	U.S.A. (OR).
C	5	R1	Makanoe lehua	*Lysimachia daphnoides*.	Primulaceae	U.S.A. (HI).
C	5	R1	Alani	*Melicope christophersenii*.	Rutaceae	U.S.A. (HI).
C	2	R1	Alani	*Melicope degeneri*	Rutaceae	U.S.A. (HI).
C	2	R1	Alani	*Melicope hiiakae*	Rutaceae	U.S.A. (HI).
C	2	R1	Alani	*Melicope makahae*	Rutaceae	U.S.A. (HI).
C	2	R1	Alani	*Melicope paniculata*	Rutaceae	U.S.A. (HI).
C	5	R1	Alani	*Melicope puberula*	Rutaceae	U.S.A. (HI).
C	5	R1	Kolea	*Myrsine fosbergii*	Myrsinaceae	U.S.A. (HI).
C	2	R1	Kolea	*Myrsine mezii*	Myrsinaceae	U.S.A. (HI).
C	5	R1	Kolea	*Myrsine vaccinioides*	Myrsinaceae	U.S.A. (HI).
C	8	R5	Asphodel, bog	*Narthecium americanum*.	Liliaceae	U.S.A. (DE, NJ, NC, NY, SC).
PE	1	R1	No common name	*Nesogenes rotensis*	Verbenaceae	U.S.A. (MP).

TABLE 1. CANDIDATE NOTICE OF REVIEW (ANIMAL AND PLANT)—Continued

Status		Lead Region	Common name	Scientific name	Family	Historic range
Category	Priority					
C	5	R1	'Aiea	*Nothocestrum latifolium*.	Solanaceae	U.S.A. (HI).
C	2	R1	Holei	*Ochrosia haleakalae*	Apocynaceae	U.S.A. (HI).
C	5	R4	Cactus, Florida semaphore	*Opuntia corallicola*	Cactaceae	U.S.A. (FL).
PE	2	R1	No common name	*Osmoxylon mariannense*.	Araliaceae	U.S.A. (MP).
C	5	R5	Panic grass, Hirsts'	*Panicum hirstii*	Poaceae	U.S.A. (DE, GA, NC, NJ).
C	11	R2	Whitlow-wort, bushy	*Paronychia congesta*	Caryophyllaceae	U.S.A. (TX).
C	6	R2	Cactus, Fickeisen plains	*Pediocactus peeblesianus fickeiseniae*.	Cactaceae	U.S.A. (AZ).
C	5	R6	Beardtongue, Parachute	*Penstemon debilis*	Scrophulariaceae.	U.S.A. (CO).
C	5	R6	Beardtongue, Graham	*Penstemon grahamii*	Scrophulariaceae.	U.S.A. (CO, UT).
C*	6	R6	Beardtongue, White River	*Penstemon scariosus albifluvis*.	Scrophulariaceae.	U.S.A. (CO, UT).
C	2	R1	'Ala 'ala wai nui	*Peperomia subpetiolata*.	Piperaceae	U.S.A. (HI).
C	11	R6	Phacelia, DeBeque	*Phacelia submutica*	Hydrophyllaceae	U.S.A. (CO).
C	2	R1	No common name	*Phyllostegia bracteata*.	Lamiaceae	U.S.A. (HI).
C	5	R1	No common name	*Phyllostegia floribunda*.	Lamiaceae	U.S.A. (HI)
C	2	R1	No common name	*Phyllostegia hispida*	Lamiaceae	U.S.A. (HI).
C	5	R1	Ho'awa	*Pittosporum napaliense*.	Pittosporaceae	U.S.A. (HI).
C	5	R4	Orchid, white fringeless	*Platanthera integrilabia*.	Orchidaceae	U.S.A. (AL, GA, KY, MS, NC, SC, TN, VA).
C	6	R1	No common name	*Platydesma cornuta ssp. cornuta*.	Rutaceae	U.S.A. (HI).
C	6	R1	No common name	*Platydesma cornuta ssp. decurrens*.	Rutaceae	U.S.A. (HI).
C	2	R1	No common name	*Platydesma remyi*	Rutaceae	U.S.A. (HI).
C	5	R1	Pilo kea lau li'i	*Platydesma rostrata*	Rutaceae	U.S.A. (HI).
C	5	R1	Hala pepe	*Pleomele fernaldii*	Agavaceae	U.S.A. (HI).
C	5	R1	Hala pepe	*Pleomele forbesii*	Agavaceae	U.S.A. (HI).
PE	2	R1	Polygonum, Scotts Valley	*Polygonum hickmanii*	Polygonaceae	U.S.A. (CA).
C	5	R1	Lo'ulu,(=Na'ena'e)	*Pritchardia hardyi*	Asteraceae	U.S.A. (HI).
C	6	R1	'Ena'ena	*Pseudognaphalium (Formerly Gnaphalium) sandwicensium molokaiense*.	Asteraceae	U.S.A. (HI).
C	2	R1	Kopiko	*Psychotria grandiflora*.	Rubiaceae	U.S.A. (HI).
C	3	R1	Kopiko	*Psychotria hexandra oahuensis*.	Rubiaceae	U.S.A. (HI).
C	2	R1	Kopiko	*Psychotria hobdyi*	Rubiaceae	U.S.A. (HI).
C	5	R1	Kaulu	*Pteralyxia macrocarpa*.	Apocynaceae	U.S.A. (HI).
C	5	R1	Makou	*Ranunculus hawaiensis*.	Ranunculaceae	U.S.A. (HI).
C	2	R1	Makou	*Ranunculus mauiensis*.	Ranunculaceae	U.S.A. (HI).
C*	2	R1	Cress, Tahoe yellow	*Rorippa subumbellata*.	Brassicaceae	U.S.A. (CA, NV).
C	2	R1	No common name	*Schiedea attenuata*	Caryophyllaceae	U.S.A. (HI).
C	2	R1	Ma'oli'oli	*Schiedea pubescens*	Caryophyllaceae	U.S.A. (HI).
C	2	R1	No common name	*Schiedea salicaria*	Caryophyllaceae	U.S.A. (HI).
C	5	R1	Stonecrop, Red Mountain	*Sedum eastwoodiae*	Crassulaceae	U.S.A. (CA).
C	5	R1	'Anunu	*Sicyos macrophyllus*	Cucurbitaceae	U.S.A. (HI).
C	9	R1	Checkerbloom, Parish's	*Sidalcea hickmanii ssp. parishii*.	Malvaceae	U.S.A. (CA).
C	5	R1	Popolo	*Solanum nelsonii*	Solanaceae	U.S.A. (HI).
C	2	R1	No common name	*Stenogyne cranwelliae*.	Lamiaceae	U.S.A. (HI).
C	2	R1	No common name	*Stenogyne kealiae*	Lamiaceae	U.S.A. (HI).
PE	2	R1	No common name	*Tabernaemontana rotensis*.	Apocynaceae	U.S.A. (GU, MP).

TABLE 1. CANDIDATE NOTICE OF REVIEW (ANIMAL AND PLANT)—Continued

Status		Lead Region	Common name	Scientific name	Family	Historic range
Category	Priority					
PT	1	R6	Yellowhead, desert	*Yermo xanthocephalus*.	Asteraceae	U.S.A. (WY).
C	2	R1	A'e	*Zanthoxylum oahuense*.	Rutaceae	U.S.A. (HI).
Ferns and Allies						
C	11	R1	Moonwort, slender	*Botrychium lineare*	Ophioglossaceae	U.S.A. (CA, CO, ID, MT, OR, WA), Canada.
C	6	R1	No common name	*Cyclosorus boydiae boydiae*.	Thelypteridaceae	U.S.A. (HI).
C	6	R1	No common name	*Cyclosorus boydiae kipahuluensis*.	Thelypteridaceae	U.S.A. (HI).
C	2	R1	No common name	*Doryopteris takeuchii*	Dryopteridaceae	U.S.A. (HI).
C	2	R1	No common name	*Dryopteris tenebrosa*	Dryopteridaceae	U.S.A. (HI).
C	2	R1	No common name	*Microlepia mauiensis*	Dennstaedtiaceae.	U.S.A. (HI).
C	2	R1	Wawae'iole	*Phlegmariurus stemmermanniae*.	Lycopodiaceae	U.S.A. (HI).

TABLE 2.—FORMER CANDIDATE AND FORMER PROPOSED ANIMALS AND PLANTS

Status			Common name	Scientific name	Family	Historic range
Code	Expl.	Lead region				
Mammals						
Rc	A	R6	Fox, swift (U.S. population)	*Vulpes velox*	Canidae	U.S.A. (CO, IA, KS, MN, MT, ND, NE, NM, OK, SD, TX, WY), Canada.
T	L	R6	Lynx, Canada	*Lynx canadensis*	Felidae	U.S.A. (AK, CO, ID, ME, MI, MN, MT, ND, NH, NY, OR, PA, UT, VT, WA, WI, WY), Canada, circumboreal.
E	L	R1	Rabbit, riparian brush	*Sylvilagus bachmani riparius*.	Leporidae	U.S.A. (CA).
E	L	R1	Sheep, bighorn	*Ovis canadensis californiana*.	Bovidae	U.S.A. (Western conterminous states), Canada (southwestern).
T	L	R1	Squirrel, northern Idaho ground	*Spermophilus brunneus brunneus*.	Sciuridae	U.S.A. (ID).
E	L	R1	Woodrat, riparian	*Neotoma fuscipes riparia*.	Muridae	U.S.A. (CA).
Birds						
E	L	R7	Albatross, short-tailed	*Phoebastria albatrus*	Diomedeidae	North Pacific Ocean and Bering Sea, Canada, China, Japan, Mexico, Russia, Taiwan, U.S.A. (AK, CA, HI, OR, WA).
E	L	R1	Elepaio, Oahu	*Chasiempis sandwichensis ibidus*.	Musicapidae	U.S.A. (HI).
Amphibians						
E	L	R1	Salamander, California tiger (Santa Barbara population).	*Ambystoma californiense*.	Ambystomatidae	U.S.A. (CA).
Fishes						
Rc	A	R6	Chub, sicklefin	*Macrhybopsis meeki*	Cyprinidae	U.S.A. (AR, IA, IL, KS, KY, LA, MO, MS, MT, NE, ND, SD, TN).
Rc	A	R6	Chub, sturgeon	*Macrhybopsis gelida*	Cyprinidae	U.S.A. (AR, IA, IL, KY, KS, LA, MO, MS, MT, NE, ND, SD, TN, WY).
T	L	R2	Minnow, Devils River	*Dionda diaboli*	Cyprinidae	U.S.A. (TX), Mexico.

TABLE 2.—FORMER CANDIDATE AND FORMER PROPOSED ANIMALS AND PLANTS—Continued

Status			Common name	Scientific name	Family	Historic range
Code	Expl.	Lead region				
Rp	A	R2	Pupfish, Pecos	*Cyprinodon pecosensis*.	Cyprinodontidae	U.S.A. (NM, TX).
E	L	R5	Salmon, Atlantic (Gulf of Maine population).	*Salmo salar*	Salmonidae	U.S.A., Canada, Greenland, western Europe.
E	L	R4	Sturgeon, Alabama	*Scaphirhynchus suttkusi*.	Acipenseridae	U.S.A. (AL, MS).
T	L	R1	Sucker, Santa Ana	*Catostomus santaanae*.	Catostoidae	U.S.A. (CA).
T	L	R1	Trout, bull	*Salvelinus confluentus*.	Salmonidae	U.S.A. (Pacific NW), Canada (NW Territories).
Rc	A	R1	Trout, McCloud R redband	*Oncorhynchus mykiss* ssp.	Salmonidae	U.S.A. (CA).
			Clams			
E	L	R3	Mussel, scaleshell	*Leptodea leptodon*	Unionidae	U.S.A. (AL, AR, IL, IN, IA, KY, MN, MO, OH, OK, SD, TN, WI).
			Snails			
E	L	R4	Campeloma, slender	*Campeloma decampi*	Viviparidae	U.S.A. (AL).
E	L	R4	Snail, armored	*Pyrgulopsis pachyta*	Hydrobiidae	U.S.A. (AL).
T	L	R1	Snail, Newcomb's	*Erinna newcombi*	Lymnaeidae	U.S.A. (HI).
Rc	A	R2	Talussnail, Wet Canyon	*Sonorella macrophallus*.	Helminthoglyptid-a.	U.S.A. (AZ).
			Insects			
E	L	R1	Butterfly, Fender's blue	*Icaricia icarioides fenderi*.	Lycaenidae	U.S.A. (OR).
E	L	R2	Ground beetle, [unnamed]	*Rhadine infernalis*	Carabidae	U.S.A. (TX).
E	L	R2	Ground beetle, [unnamed]	*Rhadine exilis*	Carabidae	U.S.A. (TX).
E	L	R2	Mold beetle, Helotes	*Batrisodes venyivi*	Pselaphidae	U.S.A. (TX).
E	L	R1	Moth, Blackburn's sphinx	*Manduca blackburni*	Sphingidae	U.S.A. (HI).
E	L	R1	Tiger beetle, Ohlone	*Cicindela ohlone*	Cicindelidae	U.S.A. (CA).
			Arachnids			
E	L	R2	Harvestman, Robber Baron Cave.	*Texella cokendolpheri*.	Phalangodidae	U.S.A. (TX).
E	L	R2	Spider, Government Canyon cave.	*Neoleptoneta microps*.	Leptonetidae	U.S.A. (TX).
E	L	R1	Spider, Kauai cave wolf or pe'e pe'e maka 'ole.	*Adelocosa anops*	Lycosidae	U.S.A. (HI).
E	L	R2	Spider, Madla's cave	*Cicurina madla*	Dictynidae	U.S.A. (TX).
E	L	R2	Spider, Robber Baron cave	*Cicurina baronia*	Dictynidae	U.S.A. (TX).
E	L	R2	Spider, Vesper cave	*Cicurina vespera*	Dictynidae	U.S.A. (TX).
E	L	R2	Spider, [unnamed]	*Cicurina venii*	Dictynidae	U.S.A. (TX).
			Crustaceans			
E	L	R1	Amphipod, Kauai cave	*Spelaeorchestia koloana*.	Talitridae	U.S.A. (HI).
			Flowering Plants			
Rc	A	R2	Onion, Goodding's	*Allium gooddingii*	Liliaceae	U.S.A. (AZ, NM).
Rc	A	R6	Rock-cress, small	*Arabis pusilla*	Brassicaceae	U.S.A. (WY).
E	L	R6	Milk-vetch, Shivwitz	*Astragalus ampullarioides*.	Fabaceae	U.S.A. (UT).
T	L	R6	Milk-vetch, Deseret	*Astragalus desereticus*.	Fabaceae	U.S.A. (UT).
E	L	R6	Milk-vetch, Holmgren	*Astragalus holmgreniorum*.	Fabaceae	U.S.A. (AZ, UT).
E	L	R1	Milk-vetch, Ventura Marsh	*Astragalus pycnostachyus lanosissimus*.	Fabaceae	U.S.A. (CA).
Rc	A	R1	Lily, umpqua mariposa	*Calochortus umpquaensis*.	Liliaceae	U.S.A. (OR).

TABLE 2.—FORMER CANDIDATE AND FORMER PROPOSED ANIMALS AND PLANTS—Continued

Status			Common name	Scientific name	Family	Historic range
Code	Expl.	Lead region				
Rc	A	R2	Bugbane, Arizona	*Cimicifuga arizonica*	Ranunculaceae	U.S.A. (AZ).
E	L	R1	Thistle, La Graciosa	*Cirsium loncholepis*	≤Asteraceae	U.S.A. (CA).
Rc	N	R1	Haha	*Cyanea pseudofauriei*.	Campanulaceae	U.S.A. (HI).
Rc	A	R1	pu'uka'a	*Cyperus odoratus*	Cyperaceae	U.S.A. (HI).
E	L	R1	Larkspur, Baker's	*Delphinium bakeri*	Ranunculaceae	U.S.A. (CA).
E	L	R1	Larkspur, yellow	*Delphinium luteum*	Ranunculaceae	U.S.A. (CA).
E	L	R1	Daisy, Willamette	*Erigeron decumbens decumbens*.	Asteraceae	U.S.A. (OR).
E	L	R1	Yerba santa, Lompoc	*Eriodictyon capitatum*	Hydrophyllaceae	U.S.A. (CA).
Rc	A	R1	Buckwheat, Sulphur Springs	*Eriogonum argophyllum*.	Polygonaceae	U.S.A. (NV).
E	L	R1	Fritillary, Gentner's	*Fritillaria gentneri*	Liliaceae	U.S.A. (OR).
T	L	R6	Butterfly plant, Colorado	*Gaura neomexicana coloradensis*.	Onagraceae	U.S.A. (CO, NE, WY).
T	L	R2	Sunflower, Pecos	*Helianthus paradoxus*.	Asteraceae	U.S.A. (NM, TX).
E	L	R1	Tarplant, Gaviota	*Hemizonia increscens villosa*.	Asteraceae	U.S.A. (CA).
T	L	R1	Tarplant, Santa Cruz	*Holocarpha macradenia*.	Asteraceae	U.S.A. (CA).
Rc	A	R1	Lathyrus, two-flowered	*Lathyrus biflorus*	Fabaceae	U.S.A. (CA).
E	L	R2	Bladderpod, Zapata	*Lesquerella thamnophila*.	Brassicaceae	U.S.A. (TX).
E	L	R1	Lupine, Nipomo Mesa	*Lupinus nipomensis*	Fabaceae	U.S.A. (CA).
T	L	R1	Lupine, Kincaid's	*Lupinus sulphureus kincaidii*.	Fabaceae	U.S.A. (OR, WA).
Rc	X	R1		*Lysimachia venosa*	Primulaceae	U.S.A. (HI).
Rc	X	R1	Alani	*Melicope macropus*	Rutaceae	U.S.A. (HI).
Rc	A	R1	Cholla, Blue Diamond	*Opuntia whipplei multigeniculata*.	Cactaceae	U.S.A. (NV).
E	L	R1	Phlox, Yreka	*Phlox hirsuta*	Polemoniaceae	U.S.A. (CA).
Rc	X	R1		*Phyllostegia helleri*	Lamiaceae	U.S.A. (HI).
Rc	X	R1		*Phyllostegia imminuta*.	Lamiaceae	U.S.A. (HI).
E	L	R1	Popcornflower, rough	*Plagiobothrys hirtus*	Boraginaceae	U.S.A. (OR).
E	L	R1	Checker-mallow, Keck's	*Sidalcea keckii*	Malvaceae	U.S.A. (CA).
E	L	R1	Checkermallow, Wenatchee Mountains.	*Sidalcea oregana calva*.	Malvaceae	U.S.A. (WA).
Rc	I	R1	Catchfly, Red Mountain	*Silene campanulata campanulata*.	Caryophyllaceae	U.S.A. (CA).
T	L	R1	Catchfly, Spalding's	*Silene spaldingii*	Caryophyllaceae	U.S.A. (ID, MT, OR, WA).
E	L	R1	Penny-cress, Kneeland Prairie	*Thlaspi californicum*	Brassicaceae	U.S.A. (CA).
Rc	A	R2	Tickle-tongue, Shinner's	*Zanthoxylum parvum*	Rutaceae	U.S.A. (TX).

[FR Doc. 01–26982 Filed 10–29–01; 8:45 am]

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Federal Register

Tuesday,
October 30, 2001

Part III

Department of the Interior

Bureau of Land Management

43 CFR Part 3800

Mining Claims Under the General Mining Laws; Surface Management; Final Rule and Proposed Rule

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3800

[WO–300–1990–PB–24 1A]

RIN 1004–AD44

Mining Claims Under the General Mining Laws; Surface Management

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Land Management (BLM or ''we'') amends its regulations governing mining operations involving metallic and some other minerals on public lands. We are amending the regulations by removing certain provisions of the regulations and returning others to those in effect on January 19, 2001. We intend these regulations to prevent unnecessary or undue degradation of BLM-administered lands by mining operations authorized under the mining laws. The approach BLM takes today balances the nation's need to maintain reliable sources of strategic and industrial minerals, while ensuring protection of the environment and natural resources on public lands. The hardrock mining regulations, including the changes adopted today, are consistent with the recommendations of the National Research Council (NRC), and protect the Federal Government from financial risk if operators are unable to perform reclamation.

EFFECTIVE DATE: This rule is effective December 31, 2001.

ADDRESSES: You may send inquiries or suggestions to Director (630), Bureau of Land Management, 401 LS, 1849 C Street, NW, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Robert M. Anderson, 202/208–4201; or Michael Schwartz, 202/452–5198. Individuals who use a telecommunications device for the deaf (TDD) may contact us through the Federal Information Relay Service at 1–800/877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

I. What is the Background of this Rulemaking?
II. How did BLM Change the Proposed Rule in Response to Comments?
III. How did BLM Fulfill its Procedural Obligations?

I. What Is the Background of This Rulemaking?

On March 23, 2001, BLM published a proposed rule (66 FR 16162) to suspend, in whole or in part, the regulations we issued on November 21, 2000 (65 FR 69998), which became effective on January 20, 2001 (hereinafter, the 2000 rule), and put in their place, in whole or in part, the regulations that existed on January 19, 2001, which, for the most part, BLM adopted in 1980 (hereinafter, the 1980 rule). As stated in the proposal, the suspension would provide BLM the opportunity to review some of the requirements of the 2000 rule in light of issues the plaintiffs raised in legal challenges to the rule and concerns expressed by others, including several states. We also requested comment on whether we should retain some combination of the 2000 regulations and the 1980 regulations. The 45-day comment period on the proposal closed on May 7, 2001. BLM received approximately 49,000 comments.

On June 15, 2001 (66 FR 32571), we published a final rule revising section 3809.505, which addressed how the new financial guarantee requirements of the 2000 rule affect existing approved plans of operations. The final rule made no substantive change in the requirements except to postpone the date by which operators must comply with the financial guarantee requirements. The rule changes the date by which operators with plans of operation approved by BLM before January 20, 2001, must provide a new financial guarantee—from July 19, 2001, to November 20, 2001, and to September 13, 2001, for operations without any financial guarantee. The extension was intended to give BLM field offices and state government agencies time to prepare to administer the requirements. We also announced in that rule that it is our intention to retain the financial guarantee provisions of the 2000 rule.

Congress also directed BLM as to how to conduct the rulemaking and what provisions BLM could include in a final rule. In particular, Congress provided express guidance to BLM in the FY 2000 and FY 2001 Interior Appropriations Acts as follows:

> None of the funds in this Act or any other Act shall be used by the Secretary of the Interior to promulgate final rules to revise 43 CFR subpart 3809, except that the Secretary, following the public comment period required by section 3002 of Public Law 106–31, may issue final rules to amend 43 CFR Subpart 3809 which are not inconsistent with the recommendations contained in the National Research Council report entitled ''Hardrock Mining on Federal Lands'' so long as these regulations are also not inconsistent with existing statutory authorities. Nothing in this section shall be construed to expand the existing statutory authority of the Secretary. (Public Law 106–113, 113 Stat. 1501, App. C., 113 Stat. 1501A–210 sec. 357 (1999).)

(See the National Research Council Report , entitled *Hardrock Mining on Federal Lands* (NRC Report), September, 1999).

An identical provision was enacted in Sec. 156 of the FY 2001 Interior Appropriations Act (Public Law 106–291, sec. 156, 114 Stat. 922, 962–63 (Oct. 11, 2000)).

Following issuance of the 2000 rule four lawsuits were filed challenging the rule, three in the U.S. District Court for the District of Columbia (brought by the National Mining Association (NMA), the Newmont Mining Corporation, and the Mineral Policy Center and two other environmental groups), and one in the U.S. District Court for Nevada (brought by the State of Nevada). These cases include *National Mining Association* v. *Department of the Interior*, No. 00CV–2998 (D.D.C. filed December 15, 2000); *Newmont Mining Corporation* v. *Department of the Interior,* No. 01CV–23 (D.D.C. filed January 5, 2001); *Mineral Policy Center* v. *Department of the Interior,* No. 01CV–73 (D.D.C. filed January 16, 2001); and *State of Nevada* v. *DOI,* No. CV–N01–0040–ECR–VPC (D. NV filed January 19, 2001).

The industry plaintiffs and the State of Nevada assert that BLM improperly issued the 2000 rule and violated numerous statutes, including:

- The specific congressional provisions cited above applicable to promulgation of the revised 3809 rule;
- The notice and comment provisions of the Administrative Procedure Act, particularly with regard to the ''substantial irreparable harm'(SIH) standard of the final regulatory definition of the term ''unnecessary or undue degradation;'
- The National Environmental Policy Act;
- The Regulatory Flexibility Act;
- The Federal Land Policy and Management Act; and
- The General Mining Law.

The environmental plaintiffs assert that the 3809 regulations are not sufficiently stringent and improperly allow mining operations on lands without valid mining claims or mill sites.

On January 19, 2001, the Federal District Court in the National Mining Association suit denied NMA's motion for a preliminary injunction to stay the effective date of the final rules, holding that the plaintiff did not successfully meet its burden of showing that the revised 3809 rule becoming effective would cause irreparable harm. As to the merits of the plaintiff's claims, the Court concluded that, although such claims

may or may not have merit, it was unclear at the preliminary injunction stage of the proceeding that the NMA would eventually prevail. The litigation is currently stayed pending this rulemaking.

On February 2, 2001, the Nevada Governor sent a letter to the Secretary of the Interior requesting postponement of the effective date and the implementation of the revised 3809 rule based on legal deficiencies associated with promulgation of the new regulations and the assertion that the revised 3809 rules were unnecessary. In his February 2, 2001, letter, the Governor expressed concern that:

> These new regulations will, if not overturned, impose significant new and unnecessary regulatory burdens on Western States and will preclude mining companies from engaging in operations they might otherwise pursue, thereby leading to a dramatic decrease in employment and revenue in the mining sector and a corresponding decrease in tax revenue and other economic benefits to Western states. BLM's own Final Environmental Impact statement concludes that the new rules will result in a loss of up to 6,050 jobs, up to $396 million in total income and up to $877 million in total industry output.

The Governor was particularly concerned because Nevada would bear the greatest impact of the revised 3809 regulations.

In the March 23, 2001, proposal, BLM acknowledged that the plaintiffs, including the State of Nevada, raised serious concerns regarding the revised 3809 regulations. These factors were, in part, the basis for BLM's proposal to suspend the 2000 rule.

In the March 23, 2001, proposal we stated:

> If BLM were to implement the new regulations, and then be required to change back again if the new rules are found deficient, the impact on both large and small miners is of substantial concern. Many of the latter, particularly, may not be sophisticated in dealing with changing regulatory requirements. On a larger scale, implementation of the 2000 rule could create an uncertain economic environment. (66 FR 10164)

In addition we also stated:

> * * * we specifically solicit comments as to whether some provisions of the revised 3809 rules should not be suspended while BLM conducts its review of the issues. For example, rather than suspending all of the revised 3809 rules, BLM could leave in place some or all of the new revisions that address the specific regulatory gaps identified by the National Research Council (as identified in Alternative 5, the ''NRC Alternative,'' in BLM's final environmental impact statement), which most commenters agreed are warranted. BLM requests comments on this approach or others, e.g., whether all of the revised rules should be suspended until either BLM completes further rulemaking or until the litigation is resolved.

Basis and Purpose of the Rule

After reviewing comments, we have decided that acting in phases provides the best approach to achieving the overall objective of preventing unnecessary or undue degradation while providing opportunities to explore, develop, and produce minerals.

The first phase was to postpone the deadlines in the financial guarantee requirements for those operating under plans of operations approved before January 20, 2001, to enable both BLM and states to prepare to implement the requirements. At the same time we affirmed our intention to retain the substantive financial guarantee requirements of the 2000 rule. We published a final rule to this effect in the **Federal Register** on June 15, 2001 (66 FR 32571).

Today's action is the second step in the process. We are amending the regulations in a way that removes from the regulatory scheme the components of the 2000 rule that created the most uncertainty regarding proper regulatory standards, while leaving in place the remainder of the rule. BLM continues to believe that undertaking implementation of certain provisions of the new regulatory program applicable to hardrock mining on public lands before additional examination of the legal, economic, and environmental concerns that plaintiffs raise could prove unnecessarily disruptive and confusing to the mining industry and the states that, together with BLM, regulate the mining industry. We removed these provisions in today's rulemaking.

The provisions we are retaining reflect the many comments that support retention of the 2000 rules. The retained provisions will not unnecessarily disrupt the mining industry and will prevent unnecessary or undue degradation of the public lands while the agency considers whether further changes to the rules are warranted. For the most part, the rationale for retaining many sections of the 2000 rules is set forth in the November 2000 **Federal Register** preamble to those rules. The provisions we are leaving in place implement recommendations of the NRC Report, although we are continuing to consider whether we should modify specific provisions.

In an effort to avoid a regulatory vacuum, the March 23 notice proposed a regulatory scheme wherein the 2000 rules would have been suspended in one part of the Code of Federal Regulations (proposed subpart 3809a) and the 1980 rules would have been reinstated as subpart 3809. We do not need such an approach in these final rules because, for the most part, we are retaining the overall regulatory structure of the 2000 rules. With such a scheme in place we avoid a regulatory vacuum by removing specific provisions of the 2000 rules, replacing such provisions by corresponding provisions of the 1980 rules, or by continuing provisions from the 2000 rule that reflect the previous status quo that existed in the absence of specific provisions in the 1980 rules. We explain this latter situation in the discussion of specific sections.

As the next phase, we are also publishing in the **Federal Register** a proposed rule containing the same changes as in this final rule, as well as some additional changes we had not considered previously. The proposed rule we published on March 23, 2001, provides a logical and legally sufficient basis for today's action which changes only a few sections of the 2000 rules. However, we recognize that because of the high level of interest in this rule among affected industry groups, environmental organizations, and states, we might benefit from providing an opportunity to comment on the specific changes we are adopting today. As a result of those comments we may make further adjustments to the rules.

While we considered providing an opportunity for further public comment before issuing this final rule, we decided that it is more important to resolve as much uncertainty as to the status of the 2000 rules as quickly as possible. This benefits all affected parties by clarifying the Department's position on several issues involved in the litigation challenging the 2000 rules. However, if comments in the companion proposed rule indicate that additional changes to the rules are warranted, we will make these changes in a subsequent final rule.

This final rule is authorized by the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*) (FLPMA) and the Mining Law of 1872, as amended (hereinafter ''mining laws''). Section 302(b) of FLPMA, 43 U.S.C. 1732(b), directs the Secretary to manage development of the public lands. In addition, the final rule we are adopting today carries out the FLPMA directive that, ''[i]n managing the public lands, the Secretary shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the public lands.'' See 43 U.S.C. 1732(b).

The final rule we are adopting today is consistent with the FLPMA directive. We issue it under the general rulemaking authorities of FLPMA and the mining laws (43 U.S.C. 1733 and 1740 and 30 U.S.C. 22, respectively).

Consistency With the NRC Report Recommendations

As described earlier, in the fiscal year 2001 appropriations act for the Department of the Interior (Pub. L. 106–113, Sec. 357), Congress prohibited the Secretary from spending money to issue final 3809 rules other than those ''which are not inconsistent with the recommendations contained in the [NRC Report] so long as these regulations are also not inconsistent with existing statutory authorities.'' Comments we received during this and earlier comment periods indicate that there are divergent views on the consistency question. Some respondents strongly believe that the ''not inconsistent with'' provision sets strict limits on what we can include in this rule. That is, we can promulgate only regulations that conform exactly to specific NRC Report recommendations, and no more. Commenters on the March 23 proposal made extensive arguments in support of their views. Much discussion reiterated the positions and comments received before the November 2000 rules were published.

In the **Federal Register** preamble of the 2000 rule (65 FR 69999), we discussed this issue at length, and we continue to stand by the points we made in that discussion. There is no need to repeat those discussions here. It is clear that ''not inconsistent with'' is a more lenient standard than others that Congress could have chosen to use. For instance, Congress could have expressly said that the BLM rules could not ''go beyond'' the NRC recommendations, but it did not. Accordingly, BLM continues to interpret the Appropriations Act as not barring BLM from promulgating rules that address matters not expressly covered by the NRC Report. Nevertheless, BLM has carefully considered the entire NRC Report in deciding what course of action to take.

Today's rule continues in place those sections that specifically address NRC recommendations. As a practical matter, however, it is not feasible to publish a regulation which so narrowly interprets the Appropriation Act that BLM could not promulgate rules with provisions necessary to implement the specific overall recommendation. For example, the public and the regulated industry are better served if the financial guarantee requirements the NRC recommends include a description of acceptable instruments, and provisions on release and forfeiture, to mention a few components of a sound financial guarantee program.

In addition, we continue to leave in place portions of the 2000 rule that specific NRC recommendations do not address. We do so because BLM needs such provisions for sound land management. For example, this rule retains section 3809.101, which addresses what an operator may do with mineral materials on mining claims. Although the NRC did not discuss this issue, the problem has existed for years and the rule helps alleviate industry concerns and improves the Bureau's ability to manage mineral resources. We are still considering whether we need to make additional changes. However, today's action removes those provisions that created the most questions regarding consistency with the NRC Report. We now see ourselves in a position to learn more through the implementation of these rules before we engage in additional rulemaking.

Summary of Rule Adopted

Today's rule makes several changes to the 2000 rule. The rule continues to address regulatory gaps identified in the NRC Report. Today's changes do not affect that.

We are changing the definition of ''operator,'' found at section 3809.5. We are restoring the definition contained in the 1980 regulations.

We are also changing the definition of ''unnecessary or undue degradation'' found at section 3809.5. The proposal leading to the 2000 rule did not contain the ''substantial irreparable harm'' clause in the definition of unnecessary or undue degradation (paragraph 4). As discussed above, all but one of the lawsuits contended that the SIH provision in the definition of unnecessary or undue degradation violated the Administrative Procedure Act, NEPA, and FLPMA. Today's action removes that provision.

We also amend section 3809.116 by revising paragraph (a), which established a joint and several liability provision. This also was a provision generating numerous comments suggesting that (1) BLM had exceeded its authority and (2) liability should be proportional. As with the SIH provision, the comments we received were highly critical of the policy itself and also questioned its legality. In its revised form, the paragraph provides that mining claimants and operators are liable for obligations that accrue while they hold their interests. In effect, this returns the regulation to that in place prior to the 2000 rule.

We also amend the standards contained in section 3809.420. We removed most of the 2000 rules' environmental and operational performance standards and replaced them with the 1980 rule standards. We chose to maintain the general standards in section 3809.420(a), because these standards form a foundation upon which operators should base their plans of operations. We are unaware of widespread concern addressing these broad standards. From the 2000 rule we have retained and renumbered sections 3809.420(c)(3) and (4). These sections codify the longstanding BLM policies on acid mine drainage and use of cyanide.

The last substantive changes are the elimination of sections 3809.702 and 3809.703, which established administrative civil penalties. Throughout the process of preparing the 2000 rule, BLM was aware, as was the NRC, that BLM's authority to impose civil penalties is uncertain. Therefore, we have decided to remove these sections. At the same time, we intend to work with the Congress to clarify our authority. BLM's authority to establish an administrative penalty scheme is uncertain and, until such authority is clearly established, administrative penalties should not be part of subpart 3809.

In addition, we made a few technical changes to correct errors which appeared in the November publication of the 2000 rules. All these are discussed in more detail below.

II. How Did BLM Change the Proposed Rule in Response to Public Comments?

BLM received approximately 49,000 comments on the March 23, 2001, proposal. Mail campaigns generated the majority of the comments, as 3 repeated messages constituted over 95 percent of the comments. Each comment succinctly asked us to retain the 2000 regulations because they would better protect the environment than the previous regulations. The comments also pointed out that the 2000 rule followed years of public comment and congressional debate, and deserve a chance to work. This last point clearly disputes the uncertainty argument BLM noted in the March 23, 2001, proposal.

In response to these comments, we are retaining intact most of the 2000 regulations. We are removing several provisions that seem particularly and unnecessarily onerous and raise clear legal and policy issues. Some industry comments made recommendations as to particular sections of the 2000 regulations that we should retain. Since we are retaining most of those regulations, we do not need to discuss

these recommendations individually, and rely on the November 21, 2000, **Federal Register** preamble to support individual sections. On June 15, 2001 (66 FR 32571), we published the final rule saying that we would retain the financial guarantee provisions from the 2000 regulations, but postponing their effective date for operations BLM approved prior to January 20, 2001.

We received comments in support of the March 23, 2001, proposal that generally contained arguments that were made in opposition to the 2000 rule when it was proposed. We also received new arguments concerning the SIH provision. These detailed comments generally came from state governments, industry associations, and mining companies. A limited number of individuals also submitted detailed comments. A joint comment from several environmental organizations included a detailed analysis opposing the proposal. Responses to these specific comments follow in the next paragraphs.

Section 3809.5 How Does BLM Define Certain Terms Used in This Subpart?

Casual Use

Several comments from persons who engage in small scale placer mining objected to language in the definition of ''casual use'' allowing employment of only hand or battery-powered dry washers, as part of casual use. Many recreational miners use dry washers powered by small gasoline motors that are roughly equivalent to lawn mower motors. The comments said that this definition would bar these miners from using public lands for their activities due to the cost of acquiring battery-powered dry washers. We are not making this change in the final rule. However, in the proposed rule that we are issuing today, we will propose amending the definition of ''casual use'' to accommodate this small-scale use.

Operator

This final rule revises the definition of the term ''operator'' to say that it means any person who is conducting or proposing to conduct operations. This is a return to the definition set forth in the 1980 regulations. It does not contain the 2000 rule provisions that expressly include persons who manage or direct operations and corporate parents and affiliates who materially participate in the operations. We also removed the statement that the operator can also be the claimant. Of course, the claimant may operate his or her mining claim, but stating that in the definition is unnecessary, and confusing as it could be interpreted to mean that BLM will always treat the claimant as the operator.

BLM is concerned that the 2000 rule definition of the term ''operator,'' by referencing ''parent'' entities and affiliates, appeared to authorize BLM routinely to breach the corporate veil that generally is established under state corporate laws to protect such entities. As explained in the **Federal Register** preamble to the 2000 rule (65 FR 70013), BLM adopted the ''material participation'' standard in the 2000 rules based on a concept authorized under CERCLA, as enunciated in a recent Supreme Court decision. However, there is no indication that Congress intended to override state laws in this regard under FLPMA. Unlike statutes such as the Surface Mining Control and Reclamation Act (*see, e.g.,* 30 U.S.C. 1260(c)) that expressly focus on ''ownership'' and ''control'' of entities, neither the mining laws nor FLPMA expressly holds parent entities and affiliates responsible for activities which occur at mining operations conducted by other entities. Thus, we decided we will not include the concept of ''parent'' or ''affiliate'' responsibility in the definition of the term ''operator'' in subpart 3809. Under these final rules, we will hold the appropriate entity liable through established state common law principles.

Commenters objected to the 2000 rules' definition of the term ''operator'' because of their concern that the definition, working together with the principle of joint and several liability in section 3809.116(a), would create a presumption that parents and affiliates of an entity conducting mining operations at a mine site each would be 100 percent liable for activities at the mine site. Many stakeholders consider this standard to be inequitable in its application. As described below, the principle of joint and several liability has been removed from subpart 3809, and merely characterizing an entity as an ''operator'' does not establish a particular level of responsibility, absent a specific and significant degree of involvement with the mining operation that we must determine on a case-specific basis, guided by common law principles.

At this time, the least confusing course of action is to reinstate the definition that BLM used for 20 years and is familiar to BLM and the states, while considering whether changes are appropriate.

Unnecessary or Undue Degradation

The final rule amends the definition of the term ''unnecessary or undue degradation'' by removing paragraph (4) which included in the definition conditions, activities, or practices that occur on mining claims or millsites located after October 21, 1976, (or on unclaimed lands) and result in substantial irreparable harm to significant scientific, cultural, or environmental resource values of the public lands that cannot be mitigated (the ''SIH'' standard). This paragraph, which was included in the final rule without first appearing in either of BLM's proposals which preceded the November 2000 final rules, gave BLM authority to deny plans of operation even if all of the other standards could be satisfied. Of all the provisions in the 2000 rules, this one paragraph had more projected economic impacts than all of the other sections combined. It is this provision that the Nevada Governor most strenuously objects to, and various plaintiffs have challenged. BLM has concluded that, as a matter of basic fairness, we should not have adopted this truly significant provision without first providing affected entities an opportunity to comment both as to its substance and as to its potential impacts. Because the potential impacts of the SIH standard are so dramatic, BLM is reluctant to continue to include such a provision at all. BLM is also concerned that it would be very difficult to implement the standard fairly as it relates to significant cultural resource values. In addition, the Interior Department Solicitor has issued an opinion (M–37007) addressing the legal authority of the SIH standard. This opinion has been placed in the Administrative Record.

Persons commenting on the March 23 proposed rule objected to the SIH standard. Commenters said that including the ''substantial irreparable harm'' standard in the final rule was not lawful for the following reasons:

(1) The introduction of the term ''substantial irreparable harm'' in the final rule did not constitute a legal rulemaking. Commenters stated that its inclusion violated the Administrative Procedure Act as it had not been directly used in the proposed rule and therefore did not receive adequate public scrutiny. Most of these commenters also noted their belief that the economic analysis and NEPA analysis of SIH in support of the 2000 rule was inadequate. Comments also asserted that the SIH standard is contrary to the Appropriations Act provision regarding consistency with the NRC Report; and,

(2) SIH would improperly give the BLM the right to disapprove plans of operations after an applicant has spent

considerable sums. Comments said that this creates uncertainty for the industry and its financing, and therefore provides a strong disincentive against conducting exploration and development activities in the United States. As mentioned above, commenters such as the Governor of Nevada were concerned about the dramatic economic impacts the SIH standard might cause.

Comments supporting the 2000 rule endorsed the reasoning behind the SIH provision, namely that some locations contain resources which BLM should protect from the impacts of mining. Some of these comments came from Indian tribes, which were concerned about the impact of mining on cultural resources.

One of the primary factors prompting the March 23, 2001, proposed rule was the concern about the SIH provision. Regardless of whether this provision was legally promulgated in the 2000 rule, BLM has determined that we should remove the provision, since other means exist to protect the resources covered by the SIH standard.

Because the term ''unnecessary or undue degradation'' is not defined in FLPMA, BLM has substantial discretion in defining the term and in establishing the appropriate means to prevent unnecessary or undue degradation of the public lands. BLM does not need an SIH standard in its rules either to protect against unnecessary degradation or to protect against undue degradation. FLPMA does not define either concept to mean substantial irreparable harm. Moreover, BLM has other statutory and regulatory means of preventing irreparable harm to significant scientific, cultural, or environmental resource values. These include the Endangered Species Act, the Archaeological Resources Protection Act, withdrawal under Section 204 of FLPMA (43 U.S.C. 1714), the establishment of areas of critical environmental concern (ACECs) under Section 202(c)(3) of FLPMA (43 U.S.C. 1712(c)(3)), and the performance standards in section 3809.420, to recite a partial list.

In particular, FLPMA defines ACECs as ''areas within the public lands where special management attention is required * * * to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources or other natural systems or processes, or to protect life and safety from natural hazards.'' 43 U.S.C. 1702(a). Thus, FLPMA established a specific means to protect resources on the public lands from irreparable damage. Congressional intent to protect these resources can clearly be satisfied by using the statutorily created land use planning process of establishing ACECs, without creating an additional overlay in the definition of ''unnecessary or undue degradation.'' It should be understood that, although 43 U.S.C. 1712, which provides for the designation of ACECs, does not impair the rights of claimants under the mining law, BLM may establish protective conditions to prevent irreparable damage within ACECs.

Another comment supporting the reinstatement of the 1980 unnecessary or undue degradation definition containing a ''prudent operator'' standard noted that the NRC Report did not advocate abandoning the prudent operator standard. BLM carefully considered reinstating the previous definition. On balance, however, BLM decided simply to strike paragraph (4) from the definition in the 2000 rule rather than completely reinstating the 1980 rule. Thus the definition of unnecessary or undue degradation resulting from today's action does not use the term ''prudent operator.'' In effect, paragraph (1) of the definition of unnecessary or undue degradation sets forth how a prudent operator would conduct operations. Such an operator would comply with the performance standards in this subpart and other environmental protection statutes, which describe a prudent way to conduct operations to prevent surface disturbance greater than necessary. This is the basis of the previous definition. The NRC Report (p. 121) discusses the ambiguity resulting from the 1980 rule definition of unnecessary or undue degradation. The current definition has the benefit of being a clearer exposition of what constitutes unnecessary or undue degradation than the definition in the 1980 regulations. To comply with NRC Report recommendation 15, BLM intends to develop guidance manuals to communicate the agency's authority under the definition of unnecessary or undue degradation to protect resources that may not be protected under other laws. For these reasons, we believe the definition in the 2000 rule is not inconsistent with the NRC Report and, other than removing paragraph 4, we did not change it in today's rule.

Section 3809.11 When Do I Have To Submit a Plan of Operations?

One comment from an industry trade association generally approved of this section, saying that the NRC had recommended most of its provisions. However, the comment stated that BLM should remove paragraphs (c)(6) and (7). These paragraphs require a plan of operations for operations causing surface disturbance greater than casual use in lands or waters known to contain Federally proposed or listed threatened or endangered species or critical habitat, or in any of BLM's National Monuments or National Conservation Areas. The comment stated that ''[t]he NRC Report did not recommend any additions to the list of 'special status areas,' '' and that ''requiring a plan because the mining activity will take place in a 'so called' special status area is in violation of the withdrawal procedures of FLPMA.''

No change was made in response to these comments. These same points were made in comments on the 1999 proposed rule (*see* 65 FR 70021). Our response in the preamble of the 2000 rule still applies: these provisions do not withdraw any land from the operation of the mining law. They merely establish a threshold for requiring a plan of operations for exploration activities. (All mining operations are required to submit a plan of operations under the 2000 rule, regardless of whether they are located in a special status area.) The NRC Report, which focused only on the 1980 regulations, acknowledged that certain lands require a greater degree of protection than others. In 1980, BLM did not manage National Monuments and therefore could not have included them as lands requiring a plan of operations. With respect to threatened and endangered species, as a practical matter, even under the 1980 regulations BLM looked carefully at any activity in lands or waters where surface disturbance could cause an impact to species or habitat. This scrutiny helps the operator avoid inadvertently violating the Endangered Species Act.

Section 3809.31 Are There Any Special Situations That Affect What Submittals I Must Make Before I Conduct Operations?

We added the phrase ''For other than Stock Raising Homestead Act lands'' to the beginning of paragraph (e) to make it clear that paragraph (c) does not apply to Stock Raising Homestead Act lands, which we address in paragraph (d). We made the change because it was possible to construe paragraph (e) in such a way that it could be read to include Stock Raising Homestead Act lands. This was not our intent in the 2000 rule, as demonstrated by the presence of paragraph (d), which applies only to Stock Raising Homestead Act lands.

Section 3809.100 What Special Provisions Apply to Operations on Segregated or Withdrawn Lands?

One comment from a state government agency said, ''The requirement for validity determinations of mining claims on withdrawn or segregated lands prior to approval of a Plan of operations is unwarranted and will present an unnecessary and burdensome cost to many small independent miners* * *''

We appreciate the concern expressed by the state. BLM recognizes that conducting validity determinations is a resource intensive process that can take a considerable amount of time, particularly given the competing demands on BLM's mineral examiners. We also understand that the resulting delays could affect small operators. However, we made no change in this provision. Lands are withdrawn or segregated from the operation of the Mining Law, except for valid existing rights, for many resource protection reasons. The withdrawal or segregation would be seriously weakened if there were no process for determining whether a mining claim is valid and was valid at the time of withdrawal or segregation. The requirement for validity determinations before approval of plans of operations ensures that the withdrawn areas will not suffer resource damage from operations on invalid claims. This tradeoff provides an additional measure of protection for the public lands while allowing mining to proceed once a determination is made that the claims are valid (and BLM could otherwise approve the plans). In many instances, operators planning to operate in withdrawn areas should be able to allow in advance for the time necessary for a validity examination to be performed. The process in this section is similar to that in BLM's wilderness management regulations. We note that the impacts the state is concerned about may not occur in segregated areas because the validity process is discretionary in such areas (for reasons described in the preamble to the 2000 rule).

Section 3809.116 As a Mining Claimant or Operator What Are my Responsibilities Under This Subpart for my Project Area?

The 2000 rules stated expressly that mining claimants and operators were ''jointly and severally'' liable for obligations arising under subpart 3809. Together with the revised definition of the term ''operator,'' the 2000 rules expressly established the principle that all claimants and operators would each be 100 percent liable for all obligations that accrued while they held their interests.

The 1980 rules contained no express provision addressing the apportionment of liability among operators and mining claimants. Under the previous (1980) regulatory scheme, liability was established on a case-by-case basis under state common law principles. The BLM Manual in effect since 1985 reflected that under the 1980 rules both operators and mining claimants could be liable for reclamation. The Manual provided: ''Reasonable reclamation of surface disturbance is required of all operators, regardless of the level of operations. Mining claims are commonly leased and the claimants are often unaware of the level of operations occurring on the claims. The mining claimants are ultimately responsible for reclamation if the operator abandons the operation.'' BLM Manual, Section 3809.11. Thus, even without an express regulatory provision, BLM considered operators and mining claimants responsible for reclamation.

In this final rule, we eliminated the reference in section 3809.116(a) to ''joint and several'' liability. The 2000 rules provided a series of examples. These are also removed in this final rule. Revised section 3809.116(a) thus provides that mining claimants and operators (if other than the mining claimant) are liable for obligations under this subpart that accrue while they hold their interests. BLM recognizes that neither FLPMA nor the Mining Laws expressly provide for joint and several liability, and such an approach has not been shown to be necessary to prevent unnecessary or undue degradation of the public lands. Establishment of adequate financial guarantees should be the first line of defense against incomplete of reclamation responsibilities. The underlying liability scheme serves as a backstop and has not been demonstrated to be inadequate.

BLM intends the effect of this new provision to be equivalent to the situation that existed under the 1980 rules. The apportionment of liability among various responsible persons, including operators and mining claimants, will be established on a case-by-case basis under state common law principles, depending on the specific actions and express responsibilities of the entities involved. In some instances, mining claimants, as the entities who located the claims and have the development rights associated with the mining claims, could have the ultimate responsibility for reclamation if an operator is not available to complete its obligations.

BLM considered removing section 3809.116(a) completely, replacing it with nothing (as existed in 1980), but rejected that option because it would have been more confusing and left all liability questions unanswered. The final rule adopted today codifies the scheme in effect under the 1980 rules, but removes the standard that operators and mining claimants will always be jointly and severally liable.

One comment stated that this section's imposition of joint and several liability on claimants and operators has no statutory basis, since no provisions of FLPMA contemplate or support the imposition of such a liability scheme. It went on that there are both practical and due process problems with imposing joint and several liability for civil and criminal penalties, because such penalties could be considered ''obligations under this subpart.''

The comment stated that only operators should be liable for compliance with operator requirements. Claimants who have leased claims, sold them reserving a royalty, or contributed them to a joint venture, have no control over operations other than those conferring operator status on claimants. The comment said that making claimants liable for the acts of others would chill, and probably eliminate, these types of transactions in mining claims.

The comment concluded that the imposition of joint and several liability is inconsistent with the NRC Report recommendations, saying that the NRC Report did not endorse this approach. In fact, according to the comment, a joint and several liability scheme undermines the NRC recommendation to remove barriers to reclaiming abandoned mine sites through limiting the liability of the new operator as relates to previous contamination. The imposition of joint and several liability will discourage such cleanups.

In light of these arguments and the equity issues involved, the final rule no longer expressly provides that claimants and operators are jointly and severally liable for damage caused by the operator. If the operator is bankrupt or out of business, and damage needs to be repaired, BLM will rely on other financial resources to perform the clean-up. The resources of first resort will normally be the bond or other financial guarantee posted by the operator. Liability may extend to parent companies, in some cases, under state common law principles. As mentioned earlier, claimants may also be ultimately responsible because they are the ones

who have rights and responsibilities under the mining laws.

Some comments compared the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601 *et seq.*, to mining operations. In response, we note that subpart 3809 only covers liability for reclamation of mining operations under FLPMA and the mining laws. Unlike CERCLA, these statutes do not establish joint and several liability. To the extent obligations associated with mining operations arise under CERCLA or any other statute, such obligations are independent of those that subpart 3809 establishes. Subpart 3809 is not intended to affect any obligations established under other statutes, and liability schemes under such other statutes do not determine the entities responsible under subpart 3809. BLM will determine the appropriate degree of liability on a case-specific basis, guided by common-law principles.

Section 3809.401 Where Do I File my Plan of Operations and What Information Must I Include With It?

This final rule does not amend section 3809.401 except to change a cross-reference to a renumbered performance standard. Section 3809.401(b), which specifies the required content of a plan of operations, contains more detail than its equivalent in the 1980 regulations did, former section 3809.1–5(c). For example, section 3809.1–5(c)(4) of the 1980 regulations required:

> Information sufficient to describe or identify the type of operations proposed, how they will be conducted, and the period during which the proposed activity will take place.

This previous requirement was vague and left a considerable amount of discretion to the BLM field manager. This created problems both with consistency among the BLM offices and uncertainty among operators as to which information to submit. Section 3809.401 in the 2000 rules specifies exactly what BLM needs: designs, cross-sections, and operating plans for mining areas, processing facilities, and waste disposal facilities; water management plans; rock characterization and handling plans; quality assurance plans; a schedule of operations; and access plans.

One comment from an industry trade association specifically addressed this section, saying that it imposed ''[c]onsiderable new and burdensome information gathering and application requirements for proposed mining plans of operations.'' The respondent included this section in a list of provisions it considered ''inconsistent with the NRC Report.'' BLM disagrees with this comment. All the material specified in section 3809.401 is information that a field manager requires to analyze whether the plan of operations will comply with the performance standards and the National Environmental Policy Act. Many operators were already providing this level of detail under BLM's 1980 regulations and under corresponding state rules. An important factor in industry decision-making is uncertainty, in this case as to whether BLM will approve a plan of operations. Spelling out the information requirements in the regulations goes a long way toward removing this uncertainty. Rather than being inconsistent with the NRC Report, section 3809.401 facilitates compliance with Recommendation 9 of the report, which endorses BLM use of the NEPA process in its permitting decisions. (See NRC Report at pp. 108–109.) The information BLM collects under section 3809.401 assists us in performing the analyses NEPA requires.

Section 3809.411 What Action Will BLM Take When it Receives my Plan of Operations?

This final rule amends section 3809.411 by removing a portion of paragraph 3809.411(d)(3)(iii), which would have implemented the substantial irreparable harm standard. This is a corresponding change, part of the removal of the SIH standard from the definition of unnecessary or undue degradation.

Section 3809.415 How Do I Prevent Unnecessary or Undue Degradation While Conducting Operations on Public Lands?

This final rule amends section 3809.415 by removing paragraph (d), which would have implemented the substantial irreparable harm standard. This is a corresponding change, part of the removal of the SIH standard from the definition of unnecessary or undue degradation.

Section 3809.420 What Performance Standards Apply to my Notice or Plan of Operations?

The performance standards of subpart 3809 are key to establishing the adequacy of environmental protection that the rules require. In deciding which performance standards to include in the final rule, we carefully considered the NRC Report. The general conclusion of the NRC Report is that the existing regulations are generally effective, although some changes are necessary. (NRC Report, p. 5.) The NRC Report continues that the ''overall structure of the federal and state laws and regulations that provide mining-related environmental protection is complicated but generally effective.'' *Id.* This conclusion and the material in the NRC Report that follows has led BLM to conclude that we should not have adopted an entire new set of performance standards, and that we should reinstate the performance standards from the 1980 rules. Thus, this final rule reinstates the standards that were formerly set forth in sections 3809.1–3(d) and 3809.2–2. These have been incorporated into section 3809.420, as paragraph (a)(6) and paragraphs (b)(1) through (b)(10) and (b)(13).

In addition to reinstating the 1980 performance standards, we decided to retain the general performance standards (paragraphs (a)(1) through (a)(5)) from the 2000 rule because they provide an overview of how an operator should conduct operations under an approved plan of operations and clarify certain basic responsibilities, including the operator's responsibility to comply with applicable land use plans and BLM's responsibility to specify necessary mitigation measures. We included paragraph (a)(6) in the general standards to make clear that operators must comply with pertinent state and Federal laws and regulations. This paragraph derives from the introductory text of former section 3809.2–2. These standards of final section 3809.420, while general in nature, provide ample guidance on how to conduct operations. In addition, we decided to retain from the 2000 rule the performance standards which address acid-forming, toxic, and deleterious materials and the standards governing leaching operations and impoundments. These latter standards reflect BLM's acid rock and cyanide policies, which have been in effect since before the 2000 rule was published. They have been redesignated as sections 3809.420(c)(11) and (c)(12).

In general, we believe there is merit in the comments criticizing the 2000 rule for imposing requirements that differ from those imposed by states and other Federal agencies. The approach BLM now prefers to take is to avoid establishing new and unnecessary standards that apply to resources that are already covered by another agency's standards. Except in those instances we cite below, the 1980 regulations provide an appropriate level of protection without imposing a duplicative set of standards.

The large majority of individual comments, most generated by mailing

campaigns, supported the performance standards in the 2000 regulations. However, numerous comments opposed the standards in this section. For example, one comment said that'

> new §§ 3809.420(a)(4), (b)(2), (b)(3), (b)(6), (c)(3), (c)(4), (c)(5), and 3809.5 require compliance with environmental or reclamation standards different from those imposed by states and other federal agencies, even though the NRC Report did not recommend that compliance with such standards was needed to prevent unnecessary or undue degradation of public lands.

This comment went on to cite specific instances in this section where the regulations established more stringent environmental protection measures than required by law or other Federal agency or state regulations. The comment concluded that this section in the 2000 rule lets BLM disregard EPA and state permits that an operator may have obtained and impose additional requirements upon mining operations that do not apply to other industrial activities.

We understand that it is our responsibility to implement FLPMA and prevent unnecessary or undue degradation. To the extent that compliance with other Federal and state requirements will prevent unnecessary or undue degradation, BLM prefers to rely on such standards. Contrary to the assertion in the comment, neither this final rule nor the 2000 rule was intended to allow operators to operate in a manner out of compliance with EPA and state discharge or other requirements. In areas such as the handling of acid-forming, toxic, and other deleterious materials, and leaching operations and impoundments, BLM previously determined that a need for BLM surface management guidance existed and established policies, which we codify in this rule. These standards, as well as the reinstated 1980 standards, are authorized by FLPMA, and can be implemented in a manner to harmonize with standards established by the states, EPA, and other Federal agencies. Section 3809.420(a)(4) requires operators to comply with NEPA, and to protect public land resources where adequate resource protection may not exist under other laws. This is precisely what the NRC Report was concerned about in Recommendation 15 (NRC Report, pp. 120–122).

The comment also questioned BLM's authority to establish environmental protection performance standards under the unnecessary or undue degradation standard of section 302(b) of FLPMA, 43 U.S.C. 1732(b), other than in the California Desert Conservation Area and in wilderness study areas. The comment noted that the text of a proviso to an exception in FLPMA section 603(c), 43 U.S.C. 1782(c), concerning wilderness study areas treats ''unnecessary or undue degradation'' differently from ''environmental protection'' and that the protection standard for the California Desert Conservation area in FLPMA section 601(f), 43 U.S.C. 1781(f), protects scenic, scientific, and environmental values of the public lands against ''undue impairment'' and against pollution of streams and waters. In comparing these two sections of FLPMA to Sec. 302(b), the comment concluded that Congress plainly differentiates between preventing unnecessary or undue degradation of the lands, and protecting resources and the environment.

BLM rejects the comment's analysis. FLPMA section 601(f) does not use the unnecessary or undue degradation standard of FLPMA section 302(b) and thus does not provide any indication of the meaning of section 302(b). The ''afford environmental protection'' language of FLPMA section 603(c) does not contain the modifiers ''unnecessary'' or ''undue'' and thus cannot be directly compared either. Moreover, BLM's subpart 3809 rules are based not only on the last sentence of FLPMA section 302(b), but are also based on the general management mandate of section 302(b), the rulemaking authority of 43 U.S.C. 1733 and 1740, congressional policy set forth in FLPMA section 102(a)(8), 43 U.S.C. 1701(a)(8), and the rulemaking authority of the 1872 Mining Law, 30 U.S.C. 22. Clearly, FLPMA's overall structure protecting the public lands from unnecessary or undue degradation reflects congressional intent that unnecessary or undue environmental impacts not occur. For the past 20 years, BLM's 3809 regulations have been in place to protect the public lands against unnecessary or undue degradation, including environmental protection considerations, and they continue to do so in this rule.

The comment also asserted that in other provisions of FLPMA, Congress directed BLM to ''provide for compliance with applicable pollution control laws'' in developing land use plans (Sec. 202(c)(8), 43 U.S.C. 1712(c)(8)). The comment interpreted this to mean that Congress imposed limits on BLM's environmental protection responsibilities, instructing BLM to defer to other agencies, Federal and state.

Although BLM rules do provide for compliance with applicable pollution control laws, the land use planning requirements do not control the interpretation of the unnecessary or undue degradation standard. However, we believe these arguments miss the point. The Secretary may exercise discretion to protect the environment through the process of approving a plan of operations under section 3809.411 of these regulations. The salient question is whether BLM's protection scheme should extend beyond the requirements state and other Federal agencies establish. Our response is that, as a general matter, it should not, for those areas and subjects adequately addressed by other agencies' requirements. Therefore, we do not intend to include environmental protection measures or resource protection measures in this subpart, where we can rely on those imposed by environmental protection laws such as the Clean Water Act, or regulations promulgated by the Environmental Protection Agency or jurisdictional state agencies. Thus, we concluded that the 1980 performance standards generally were more appropriate than those in section 3809.420(b) and (c) in the 2000 rule, if we include those in paragraphs (c)(3) and (c)(4) in the 2000 rule.

A number of other comments repeated this theme, and asserted that under the 2000 rule, ''operators must comply with performance standards that go beyond federal and state environmental requirements. Among other things, operators must minimize all impacts to the environment and to public lands, even if those impacts do not result in degradation of the lands and even if such impacts are specifically authorized by permits issued by other federal or state agencies.'' In response to these concerns and the conclusion of the NRC Report that environmental protection under the 1980 rules was generally effective, BLM has removed the environmental performance standards and most of the operational performance standards of sections 3809.420(b) and (c) of the 2000 rules. In their place BLM has reinstated the standards of the 1980 rules.

Despite the critical comments, BLM has decided to retain section 3809.420 (c)(3) and (c)(4), on acid-forming, toxic, or other deleterious materials (''acid rock''), and leaching operations and materials (''cyanide''), respectively. Although the acid rock and cyanide standards were first inserted into BLM's regulations as part of the 2000 rule, the reality is that BLM instituted these policies many years ago and they have become standard industry practice on the public lands. Thus, they should be considered the baseline requirements the NRC Report considered. As mentioned earlier, these are redesignated in this rule as sections

3809.420 (c)(11) and (c)(12). The provision on acid rock drainage implements water pollution control laws by stating the preferred venues for control: (1) Prevent or minimize the formation of the acid-forming toxic or deleterious materials; (2) if that can't be done, prevent such materials from migrating; and (3) if that can't be done, capture and treat the materials. This is a common-sense approach, but it is limited or mitigated by the statement in paragraph (c)(3)(iii) that operators do not have to go to lengths that are beyond ''reasonable'' for source and migration control. As to treatment, discharges of pollutants must meet state and EPA standards.

On the other hand, comments from individuals opposing the suspension of the 2000 rule, along with some Indian tribes, said that ''[t]he old rule contained no environmental performance standards while the current [2000] rule requires protection of rivers, streams and groundwater.'' These comments mis-characterize the 1980 regulations. Former section 3809.2–2(b), which we restore in this rule as section 3809.420(b)(5), required all operators to ''comply with applicable Federal and state water quality standards, including the Federal Water Pollution Control Act, as amended (30 U.S.C. 1151 *et seq.*).'' Further, as we explained in the preceding paragraph, we are retaining the ''acid rock'' and ''cyanide'' provisions from the 2000 rule, which are partly intended as water protection measures.

Along with the water quality provisions from the 1980 regulations, to accompany the ''acid rock'' and ''cyanide'' provisions from the 2000 rule, we are restoring from the 1980 rule the paragraphs on air quality, solid wastes, fisheries, wildlife and plant habitat protection, cultural and paleontological resource protection, as well as cadastral survey monument protection. Thus, it is abundantly clear that today's regulations ensure protection of the environment and of natural and cultural resources.

One comment addressed the cost allocation paragraph of the provision on cultural, paleontological, and cave resources, in which the 2000 rule gave BLM the responsibility for deciding who should pay for investigation, recovery, and preservation of such resources. The comment suggested an alternative scheme under which BLM would lease or sell the rights to recover and preserve such resources. The comment is moot because we are removing the provision in question and restoring the 1980 provision, which charged the costs to BLM.

Restoring provisions from the 1980 regulations will cause the removal of the specific reference to protection of cave resources in paragraph (b)(7), since caves were not mentioned in the 1980 regulations. However, paragraph (a)(6) in today's rule requires operator compliance with all pertinent Federal and state laws, which includes the Federal Cave Resources Protection Act (16 U.S.C. 4301 *et seq.*).

BLM expects that implementation of the performance standards of this rule will be straightforward because this final rule does not introduce new performance standards. We recognize that some confusion could exist as to which performance standards apply to particular operations. The following table clarifies which set of performance standards you should follow:

If	Then
BLM approved your plan of operations prior to the effective date of this rule.	Continue to operate under your approved plan.
Your plan of operations was pending prior to January 20, 2001	If approved, you must conduct your plan of operations under the performance standards in place before January 20, 2001.
You filed an application on or after January 20, 2001, and BLM has not acted on it as of the effective date of this rule.	If approved, you must conduct your plan of operations under the performance standards in place as of the effective date of this rule.

We should also note we did not change the plan content requirements in Section 3809.401.

Section 3809.421 Enforcement of Performance Standards

In restoring provisions from the 1980 regulations containing performance standards, we have added section 3809.421 containing language on enforcing the performance standards. This section is taken from section 3809.1–3 of the 1980 regulations. The new section is helpful to remind operators that failure to comply with the performance standards subjects them to enforcement under this subpart. We included this as a separate section because it does not fit into the structure of section 3809.420 of this final rule.

Section 3809.500 In General, What Are BLM's Financial Guarantee Requirements?

Numerous comments, including those of Indian tribes, supported the bonding and other financial guarantee provisions in the 2000 rule. Industry comments also acknowledged the need for financial guarantee requirements for all mining activities beyond casual use, as recommended by the NRC Report. As stated in our final rule of June 15, 2001 (66 FR 32571), we are not changing the overall financial guarantee requirements in the 2000 rule.

At this time we want to reiterate the Department's commitment to allow the use of existing state bond pools, if the BLM State Director determines that they provide an adequate level of protection to meet the requirements of this subpart. In particular, we wish to respond to comments suggesting that the State of Alaska bond pool would no longer be available for operations on BLM lands. That is an erroneous interpretation. Under these regulations, BLM could continue to use the State of Alaska bond pool to satisfy the requirements of subpart 3809. BLM and the State of Alaska are currently negotiating a revised Memorandum of Understanding to continue use of the bond pool. The previous Memorandum of Understanding allowing use of the bond pool has been extended until January 6, 2002 and may be extended twice again for a total of two years at the request of the State Governor. Thus negotiations can take place through the year 2003 before there would be a question as to whether BLM will accept a financial guarantee that uses the bond pool. In addition, you should note that BLM can accept other instruments, such as insurance.

Section 3809.554 How Do I Estimate the Cost To Reclaim My Operation?

One comment stated that the 2000 rule should have adopted standard bond amounts for certain activities and types of terrain. The comment said that some of the new financial assurance requirements do not properly reflect the NRC recommendations or would have counterproductive consequences. For example, it said that the 2000 rule does not incorporate the NRC Report statement that standard bond amounts be established for certain types of activities in specific kinds of terrain, especially for the activities of

prospectors, small exploration companies, and small miners. Specifically, the NRC Report states:

> Standard bond amounts for certain types of activities on specific kinds of terrain should be established by the regulatory agencies. It should be recognized that certain types of activities are less costly to reclaim than others. A set of activity- and terrain-dependent standard bond amounts (by state, BLM district, or forest) should be established for typical activities, especially those of prospectors, small exploration companies, and small miners, so that adequate bonds are posted for activities under 5 acres and so that the permitting process is expedited. Standard bond amounts (a certain number of dollars per acre of land disturbed for a particular type of activity) should be used in lieu of detailed calculations of bond amounts based on the engineering design of a mine or mill.

(NRC Report at pp. 94–95.)

According to the NRC Report, BLM should use these standard bond amounts, which would be in the form of a certain number of dollars per acre of land disturbed, instead of detailed calculations of bond amounts based on the engineering design of a mine or mill.

As we stated on November 21, 2000 65 FR 70070), ''[T]he rule is flexible enough to permit the BLM field manager to establish fixed amounts for activities under his or her jurisdiction, but also allows the field manager to require a financial guarantee in an amount over or under the fixed amount if the cost of reclamation of a specific operation deviates from the fixed amount.'' This is in keeping with our continued belief, which the NRC Report endorses, that good management principles require that an operator post a financial guarantee covering actual reclamation costs. A national rule is impractical for the establishment of fixed bond amounts, because costs of reclamation would vary from state to state and by terrain. BLM will consider whether fixed bond amounts can be set during the implementation process for this final rule.

Section 3809.598 What if the Amount Forfeited Will Not Cover the Cost of Reclamation?

In section 3809.598, we removed a reference to joint and several liability to conform to changes we made to section 3809.116. This change is supported by the discussion of the corresponding change in section 3809.116. We will determine on a case-by-case basis the apportionment of liability between operators and mining claimants to cover the full cost of reclamation.

Section 3809.604 What Happens if I Do Not Comply With a BLM Order?

In today's final rule we remove a reference in paragraph (a) of this section to civil penalties in former section 3809.702. As BLM is removing the provisions for civil penalties this cross reference is no longer necessary.

Section 3809.702 What Civil Penalties Apply to Violations of This Subpart?/ Section 3809.703 Can BLM Settle a Proposed Civil Penalty?

Two comments from mining interests—a company and a trade association—addressed these sections. Both expressly stated that it would be a good idea for BLM to have civil penalty authority, and noted that the NRC recommended that we seek this authority from Congress, if statutory authority is necessary. One of the comments stated flatly that FLPMA does not provide authority for administrative penalties, and that BLM cannot retain these provisions without the appropriate statutory authority, and the other said that it would be prudent for BLM to ascertain whether it has administrative penalty authority before retaining these provisions.

In light of these comments, we have decided to remove these two sections in the final rule. We agree that FLPMA does not contain a section expressly addressing administrative penalties. Although in the November 2000, **Federal Register** preamble we made an argument in support of the agency's authority to assess administrative penalties, this is an unsettled area for which it is prudent to await clear guidance from Congress before promulgating rules. Leaving the administrative penalty rules in effect will no doubt lead to continued litigation on the issue which the agency believes can be avoided by future legislation.

Removing these provisions should not hamper our efforts to protect human health and the environment in the event that an operator misuses a mining claim or public lands and poses an immediate threat to these values. While it would be extremely useful to be able to impose civil penalties administratively, especially as a tool to penalize delayed compliance, we can pursue alternate remedies.

We have retained the enforcement provisions of sections 3809.601 through 3809.605. This contains a significant expansion of enforcement remedies available to BLM beyond those available under the 1980 rules. Under Sec. 303(b) of FLPMA, BLM, through the Secretary of the Interior, can request the Attorney General to seek injunctive relief or other appropriate remedy, which would include a temporary restraining order in an emergency, to prevent unnecessary or undue degradation, and the collection of monetary damages resulting from unlawful acts. In appropriate circumstances, monetary damages can be large, and provide a disincentive to unlawful conduct. Section 3809.604(a) of the 2000 regulations, which we do not amend in this final rule except to correct a cross-reference, describes this statutory authority.

We have additional remedies under 43 CFR subpart 3715. The use and occupancy regulations apply to all uses of mining claims and public lands. A use must be reasonably incident (as defined in section 3715.0–5) and in compliance with all applicable Federal and state environmental standards. Further, the operator must have obtained all required permits before beginning a use, including approvals under 43 CFR part 3800 and subpart 3809. Thus, a failure to be in compliance allows BLM to issue an immediate suspension order under section 3715.7–1(a), and, where appropriate, to arrest individuals who fail to comply with such an order. At trial, the United States can demand monetary compensation for damages.

Finally, BLM may seek cooperative enforcement by a state or other Federal agency that unquestionably has civil penalty authority.

Other Comments Not Directed at Particular Sections

One comment urged that BLM, in its reconsideration of these regulations during the time they are suspended, add provisions to allow and promote the cleanup of abandoned mine sites in or adjacent to new mine areas without causing mine operators to incur additional environmental liabilities, which was an NRC recommendation. Our response to a similar comment in the 2000 rule was that ''subpart 3809 applies to active operations, not to cleaning up previously abandoned mines.''

We are also correcting a cross-reference in section 3809.2 by removing the term ''§ 3809.31(c)'' at the end of the first sentence of paragraph (a), and adding in its place the term ''§ 3809.31(d) and (e).'' This change is merely ministerial, to correct a mistake in the reference to section 3809.31, whose relevant paragraphs are (d) and (e), not (c). The discussion under section 3809.31 contains a more complete explanation.

III. How Did BLM Fulfill its Procedural Obligations?

Executive Order 12866, Regulatory Planning and Review

BLM found in the 2000 rule that the new subpart 3809 regulations were a significant regulatory action under section 3(f) of Executive Order 12866 and require an assessment of potential costs and benefits under section 6(a)(3) of that Executive Order. Since we are retaining most of the 2000 rule, while amending selected provisions, we rely in today's rule on the regulatory impact analysis and benefit-cost analysis prepared for the 2000 rule and summarized in that rule. The full analyses remains on file in the BLM Administrative Record at the address specified in the **ADDRESSES** section. In the following paragraphs, we describe how the changes presented in today's rule affect this analysis.

The estimated costs associated with this rule are significantly lower than those associated with the 2000 rule. Over the 10 year period that we analyzed, we do not expect today's rule to have significant annual impacts on the economy.

The lower expected costs arise primarily from removing the SIH provision of the 2000 rule. Relative to the 2000 rule, substantial production benefits could accrue as a result of eliminating the SIH standard. However, uncertainly exists with respect to how eliminating the SIH provision will affect net economic benefits. Uncertainty about how the SIH provision would be implemented, site specific factors, and any exploration and production effects (and the timing of these effects) make evaluating net economic benefits very difficult.

The net economic effects associated with eliminating joint and several liability, civil penalties, and revising the performance standards (with the exception of the acid rock drainage and cyanide standards, which would be retained) are equally difficult to quantify but are not significant because the economic costs associated with these provisions are likely to be overshadowed by the potential economic costs associated with the SIH provision. We estimated the net effect of modifying the performance standards from the 1980 rule to the 2000 rule as being limited. Similarly, changing the 2000 standards back to the 1980 standards will result in negligible impact.

Clarity of the Regulations

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make these final regulations easier to understand, including answers to questions such as the following:

(1) Are the requirements in the final regulations clearly stated?

(2) Do the final regulations contain technical language or jargon that interferes with their clarity?

(3) Does the format of the final regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?

(4) Would the regulations be easier to understand if they were divided into more (but shorter) sections? (A ''section'' appears in bold type and is preceded by the symbol ''§ '' and a numbered heading, for example ''§ 3809.420 What performance standards apply to my notice or plan of operations?'')

(5) Is the description of the final regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the final regulations? How could this description be more helpful in making the final regulations easier to understand?

Please send any comments you have on the clarity of the regulations to the address specified in the **ADDRESSES** section.

National Environmental Policy Act

The 2000 rule found that the new subpart 3809 regulations constituted a major Federal action significantly affecting the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C). BLM prepared an environmental impact statement (EIS), which remains on file and is available to the public in the BLM Administrative Record at the address specified in the **ADDRESSES** section. Because this final rule retains most of the provisions of the 2000 rule, we rely on the findings in the EIS. In the following paragraphs, we discuss the extent to which we expect this rule to change the impacts on the human environment that we anticipated in the 2000 rule.

Record of Decision Under the National Environmental Policy Act

This preamble constitutes BLM's record of decision required under the Council on Environmental Quality regulations at 40 CFR 1505.2. The decision is based on the proposed action and alternatives presented in the Final Environmental Impact Statement, ''Surface Management Regulations for Locatable Mineral Operations,'' (BLM, October 2000).

BLM has since reevaluated its policy direction. The action BLM is taking today is to choose a new alternative as the preferred alternative, but which is made up entirely of elements from the range of alternatives in the FEIS, whose impacts have already been analyzed. Therefore, the existing FEIS provides adequate support and will serve as the basis of today's decision. This document contains a determination of NEPA adequacy with respect to each provision that has been altered from the 2000 regulation.

After reconsidering all relevant issues, alternatives, potential impacts, and management constraints, BLM is modifying its decision of November 21, 2000, which selected Alternative 3 of the Final EIS for implementation. BLM is reissuing its Record of Decision and selecting a modified Alternative 3 from the Final EIS. The selected alternative retains many aspects of the regulations issued in 2000 while incorporating other elements of Alternative 1 (the 1980 surface management regulations) and Alternative 5 (the NRC Recommendation Alternative).

The new selected alternative (the 2001 regulations) changes the 1980 surface management regulations, which were the baseline for analysis in the EIS, in several general areas. The changes include:

(1) Modifying the definition of unnecessary or undue degradation to provide a closer link between the performance standards and prevention of unnecessary or undue degradation;

(2) Requiring mineral operators to file a Plan of Operations for any mining activity beyond casual use regardless of disturbance size;

(3) Requiring operators to provide reclamation bonds for any disturbance greater than casual use;

(4) Specifying outcome-based performance standards for conducting operations on public lands; and,

(5) Providing options for Federal-state coordination in implementing the regulations.

We present a side-by-side comparison of the 2001 regulations alternative with the regulations that were issued in 1980 (Alternative 1), 2000 (Alternative 3), and the NRC Recommendations Alternative 5 in this Record of Decision under the section titled, ''Determination of NEPA Adequacy.''

Alternatives Considered

BLM considered a full range of program alternatives when developing the 2000 rule. Chapter 2 of the Final EIS provides a description of how key issues drove the formulation of the alternatives. BLM developed the five

alternatives considered in the EIS in response to issues the public raised during the EIS scoping period and comments we received on the Draft EIS. The alternatives ranged from the required ''no action'' alternative (Alternative 1), which would have retained the 1980 regulations, to Alternative 4, the ''maximum protection'' alternative. We added a fifth alternative, Alternative 5, to the Final EIS in response to comments that BLM should only make changes to the 3809 regulations that were specifically recommended in the NRC Report. The following is a brief description of the alternatives we presented in the FEIS and the rationale behind their formulation:

Alternative 1, No Action—This alternative would have retained the 1980 surface management regulations for management of locatable mineral operations. This alternative served as the baseline for the EIS analysis. The No Action alternative encompasses the view expressed by many in industry and state governments that changes in the regulations are not needed, and that BLM should make non-regulatory changes to improve the program prior to proposing any regulatory changes.

Alternative 2, State Management—The State Management alternative would have required rescinding the 1980 regulations and returning to the prior surface management program strategy, under which state or other Federal regulations governed locatable mineral operations on public land. Compliance with these other regulations would have been deemed adequate to prevent unnecessary or undue degradation under Alternative 2. We developed this alternative in response to comments that BLM should evaluate ways to encourage mineral development through less regulation, and that a BLM regulatory role was not needed since the respective state regulatory programs were adequate to protect the environment.

Alternative 3, Year 2000 Regulations—This alternative considered the implementation of the proposed regulations developed by the 3809 Task Force. Alternative 3 was the BLM's proposed action and the agency's ''preferred alternative'' in the Final EIS. The alternative was changed between the draft and final EIS in order to incorporate conclusions and recommendations from the NRC Report and in response to public comments. This alternative was selected for implementation in November 2000, but no longer represents the preferred regulatory approach.

Alternative 4, Maximum Protection—We developed the maximum protection alternative presuming that the 3809 regulations could not change the basic mineral resource allocations made by the mining laws, and that the public lands are open to entry, location, and development of valuable mineral deposits unless segregated or withdrawn. While a total prohibition on mining activity would also achieve a higher level of environmental protection, it would be beyond the scope of the action, which is to manage activity authorized by the mining laws in a way that prevents unnecessary or undue degradation. A surface management program under Alternative 4 would allow BLM to give the highest priority to protecting resource values and impose design-based performance criteria. We developed this alternative in response to comments that stronger environmental requirements were needed, that BLM should have total discretion to deny certain mining operations, and that design-based performance standards should be developed as a nationwide minimum best management practice.

Alternative 5, NRC Recommendations—Alternative 5, like Alternative 3, incorporates the recommendations made by the NRC Report. However, Alternative 5 limits changes in the regulations to those specifically recommended by the NRC. See the NRC Report, especially pages 7 to 9. We developed this alternative in response to public comments and a then-pending appropriations bill provision that would have restricted BLM to issuing a rule covering the regulatory gaps identified in pages 7–9 of the Report.

New Selected Alternative, Year 2001 Regulations—The 2001 regulation alternative retains most of the regulatory language of Alternative 3. The 2001 regulation alternative incorporates changes in five general areas to Alternative 3 to create the new preferred and selected alternative. The changes:

(1) Revise the definition of ''operator'' by reinstating the 1980 definition;

(2) Remove paragraph four from the definition of unnecessary or undue degradation, which defined unnecessary or undue degradation, in part, as ''substantial irreparable harm to significant scientific, cultural, or environmental resource values of the public lands that cannot be effectively mitigated';

(3) Remove the joint and several liability provision to ensure fairness to all persons;

(4) Revise the section on performance standards to retain the general performance standards and the standards on acid-forming materials and leaching operations but to replace the other specific standards with those from the 1980 regulations;

(5) Remove the sections on civil penalties for noncompliance; and,

(6) Include minor editing of other sections to correct errors or provide references to appropriate sections.

This alternative was developed after reconsidering legal authority, the policy direction that will best serve the public interest, weighing the environmental benefit (including implementation burdens) and impacts to industry from Alternative 3, while ensuring that the result will not be inconsistent with the NRC recommendations.

Environmentally Preferred Alternative

Although we did not select it, the environmentally preferred alternative is Alternative 4, the maximum protection alternative. While many of the environmental protection measures contained in Alternative 4 were included in the 2001 regulations, the BLM decided not to select Alternative 4 due to its adverse economic impact and administrative cost compared to the environmental benefit.

Decision Rationale

BLM has included all practical means to avoid or minimize environmental harm in the new selected alternative. The following is a summary of the rationale for selection of the preferred alternative as compared to the other alternatives with respect to the key regulation issues. A detailed rationale for the selection of each regulatory provision, and the changes made to the 2000 regulations, is discussed elsewhere in this preamble.

Definition of ''Unnecessary or Undue Degradation'

The selected alternative satisfactorily addresses the overall program issue of improving BLM's ability to prevent unnecessary or undue degradation, as required by FLPMA. The regulations change the definition of ''unnecessary or undue degradation'' to clarify that operations on public lands must be reasonably incident to prospecting, mining or milling activities, that operators must meet the performance standards, follow their Notice or Plan of Operations, and comply with other state and Federal laws related to environmental protection. The new regulations more closely tie the prevention of ''unnecessary or undue degradation'' to objective performance standards rather than the approach in the 1980 regulations, which tended to

rely upon standard industry practices to protect public resources.

As we have stated earlier in this preamble we did not select the portion of the definition of ''unnecessary or undue degradation'' under Alternative 3, which contained the SIH provision. Although some comments with regard to this provision were received at the time that it was analyzed in the FEIS, BLM asked for further comments in its March 23, 2001, notice in order to enlist the aid of the public in its review of the rule, as well as ensure that the public has had ample opportunity to review and comment on the impact of the prohibition in paragraph (4) against substantial irreparable harm to significant resources. After reviewing the comments received and evaluating BLM's policy direction in order to better implement its mission in the manner that will best serve the public interest, BLM decided that implementation and enforcement of the SIH standard would be difficult and potentially subjective, as well as expensive for both BLM and the industry. The remainder of the 2000 definition of unnecessary or undue degradation, based more closely upon performance standards, will accomplish this goal in a more objective and practical manner.

The impacts upon the level of protection afforded to sensitive resources by this change from the 2000 definition will not differ significantly from the range of alternatives analyzed in the FEIS, and will probably fall between Alternatives 1 and 3.

In comparison, Alternatives 1 and 5 would not provide BLM with the maximum ability to determine necessary resource protection measures with its ''prudent operator'' standard for what constitutes ''unnecessary or undue degradation.'' BLM believes that the ''prudent operator'' standard in these Alternatives gives the operator too great a role in determining the appropriate level of protection of public resources.

Alternative 2 would remove the definition of ''unnecessary or undue degradation'' as a regulatory criterion and rely on the requirement for operators to comply with state regulations and other environmental laws to protect public lands. BLM decided not to select this alternative since certain resources, wildlife not proposed or listed as threatened or endangered, cultural resources, and riparian areas would, not receive the same level of consideration in planning and conducting mineral operations at the state level as under other alternatives. Alternative 2 did not provide a reasonable assurance that unnecessary or undue degradation would be prevented for a variety of public resources without a BLM role in the review of individual projects.

Alternative 4 would tie the definition of ''unnecessary or undue degradation'' to use of design-based standards and best available technology. BLM does not believe such standards are flexible enough for application to the wide variety of mining operations and environmental conditions on public lands, resulting in over- or under-regulation of some operations.

Performance Standards

The new alternative retains the general performance standards from Alternative 3 but replaces the specific and environmental standards , except those relating to acid rock and cyanide, with those in Alternative 1. The new selected alternative provides performance standards that enumerate specific outcomes or conditions, yet do not mandate specific designs. This type of performance standard provides BLM with the level of detail needed to ensure that all environmental components are addressed, and at the same time preserves flexibility to consider site-specific conditions and allows for innovation in environmental protection technology. The performance standards developed under the selected alternative often require compliance with, or achievement of, the applicable Federal or state standard. We believe this is appropriate as it facilitates coordination with the states and reduces the potential for a single operation to be subject to conflicting standards. The 2001 regulations also provide that BLM may take enforcement actions where the performance standards are not being met. We included these requirements because without enforcement the performance standards may not be effective in protecting or reclaiming public resources.

We did not select Alternatives 1 or 5, which would retain only the performance standards in the 1980 regulations, because the regulations did not include recent program guidance related to the performance of operations using cyanide, or operations where acid rock drainage is an issue. This alleviates any concerns that policy and guidance documents may not provide an adequate basis for enforcement if either Alternative were selected.

We did incorporate the 1980 performance standards into the selected alternative, but have added language linking the standards to existing state and Federal law and tied compliance with these standards more closely to the definition of unnecessary or undue degradation.

Under Alternative 2, operators would have to comply with the performance standards of the state in which their operations are located. While BLM has found the standards in many states generally adequate in the areas they cover, BLM believes that minimum Federal standards are needed for operations on public lands in order to prevent unnecessary or undue degradation. Relying on individual state standards which may vary widely, which may not address all resources of concern to BLM, or which are subject to change or varying application would not, in our judgment, allow BLM to prevent unnecessary or undue degradation. Therefore, Alternative 2 was not been selected.

The performance standards under Alternative 4 would have been design-based and would not be flexible enough to account for the variety of mining operations and environmental conditions on public lands. The performance standards under Alternative 4 would have been overly stringent for some operations or possibly not stringent enough in other cases. In addition, the NRC Report recommended against adoption of prescriptive, design-based, standards such as those in Alternative 4. Adoption of these standards would be inconsistent with the NRC Report.

Notice Plan of Operations Threshold

BLM's main mechanism for preventing unnecessary or undue degradation is through the review of Notices and the review and approval of Plans of Operations. The threshold for when to file a Plan, what it must contain, and how it is reviewed, are part of this mechanism. After considering a variety of approaches for setting the notice/plan of operations threshold, including the NRC Report recommendations, BLM has decided the threshold should generally be set between the exploration and mining levels of activity. In special category lands, BLM has decided to set the threshold at any activity greater than ''casual use.'' By using these thresholds, the selected alternative focuses the detailed review upon the site-specific environmental analysis process conducted for a Plan of Operations. The basis is the level of harm likely to result from the activity, rather than its purpose or intended result, and so a distinction has been drawn between exploration activities and mining operations. Exploration generally has not created major environmental impacts, nor is it difficult to mitigate. Casual use generally results in no or negligible disturbance of the public lands. The

requirement to file a Notice for operations involving exploration activities, combined with the selected alternative's financial guarantee requirements and performance standards, will prevent unnecessary or undue degradation while focusing agency resources at the activity with the greatest potential to cause impacts.

BLM has also included other changes to the regulations applicable to Plans of Operations in the selected alternative. We have developed a more comprehensive list of content requirements, as compared to Alternative 1, to ensure that critical items, such as plans and standards for reclamation, interim management and environmental monitoring, are not overlooked. We have added a mandatory public notice and comment requirement to the process of reviewing proposed Plans of Operations to ensure the public has an opportunity to comment prior to approval of plan activity that may impact public resources. The provisions in the selected alternative are the same as those found in Alternative 3.

We did not choose Alternative 1 because to do so would have been inconsistent with the NRC Report. Some small mining operations disturbing less than 5 acres have created significant environmental impacts or compliance problems. These problems could have been avoided or reduced if BLM had required the operator to submit a Plan of Operations and the plan had been subject to NEPA review.

Alternative 2 would not have addressed this issue satisfactorily. While generally all states have some permit review process, most do not have a comprehensive review process similar to NEPA. Other states may have permits geared towards specific media like air or water, but may not address concerns such as cultural resources, or may not always include a public involvement process.

Conversely, Alternative 4 would require a Plan of Operations for any activity greater than casual use, including exploration. Use of agency resources to process Plans of Operations for exploration projects, which have a low environmental risk, would not be efficient and would result in unnecessary delay to the mineral operator. In addition, this requirement would not be consistent with the NRC Report, which recommended that Plans of Operations be required for mining and milling operations (but not exploration activities), even if the area disturbed is less than 5 acres.

While Alternative 5 has the same notice/plan of operations threshold as the selected alternative, it does not contain the more specific Plan of Operations content or public notice and comment requirements. BLM believes these requirements are necessary for the identification, prevention, or mitigation, of environmental impacts associated with mining. These additional requirements are not inconsistent with the NRC Report.

Financial Guarantees

The posting of a financial guarantee for performance of the required reclamation is a major component of the regulatory program under all the alternatives BLM considered. The new selected alternative is the same as Alternative 3. It requires all notice- and plan-level operators to post a financial guarantee adequate to cover the cost as if BLM were to contract with a third party to complete reclamation according to the reclamation plan, including construction and maintenance costs for any treatment facilities necessary to meet Federal and state environmental standards. BLM decided to require financial guarantees for all Notices and Plans of Operations because of the inability or unwillingness of some operators to meet their reclamation obligations. At present, the potential taxpayer liability for reclamation of operations conducted under the 3809 regulations and not having a financial guarantee is in the millions of dollars. BLM has decided that to protect and restore the environment and to limit taxpayer liability, financial guarantees for reclamation should be required at 100 percent of the estimated cost for BLM to have the reclamation work performed. This includes any costs that may be necessary for long-term water treatment or site care and maintenance.

The 1980 regulations (Alternative 1) do not contain financial guarantee requirements adequate to achieve this level of protection. Under the 1980 regulations, notice-level operators are not required to provide a financial guarantee for reclamation, and financial guarantees for plan-level operations are discretionary. A number of notice-level operations have been abandoned by operators, leaving the reclamation responsibilities to BLM. In addition, the existing regulations are silent on the need to provide bonding for any necessary water treatment or site maintenance. BLM believes it is necessary to specify this requirement to eliminate any argument about requiring such resource protection measures.

Alternative 2 would rely on state financial guarantee programs. While BLM intends to work with the states under the selected alternative to avoid double bonding, relying exclusively on state bonding may not provide adequate protection of the public resources. Not all states require a financial guarantee for all disturbance at 100 percent of the estimated reclamation cost.

Alternative 4 requires financial guarantees for reclamation of all disturbance at 100 percent of the estimated reclamation costs. Alternative 4 would also require bonding for undesirable events, accidents, failures, or spills. BLM believes it would be overly burdensome on the operator to require a financial guarantee for the remediation of events with a low probability of occurrence and therefore did not select the Alternative 4 financial guarantee provisions. Such potential problems are best addressed by a thorough review of the operating plans and the development of contingency measures, which are part of the selected alternative.

Alternative 5 would impose financial guarantee requirements similar to the selected alternative. However, under Alternative 5, the procedural requirements for establishing the amount of a financial guarantee are more limited than those followed under the selected alternative. For example, there is no public notification before release of the financial guarantee, as there is in the selected alternative. BLM believes these procedures are of value in arriving at a final reclamation financial guarantee amount and has therefore not selected the Alternative 5 financial guarantee requirements.

Enforcement

The new selected alternative for enforcement of the regulations does not include the civil penalties provisions that were contained in Alternative 3. Throughout the process of preparing the 2000 rules, BLM was aware, as was the NRC, that it is not clear FLPMA provides BLM the authority to impose civil penalties is uncertain. In light of comments questioning BLM's authority to assess civil penalties the new selected alternative does not include provisions for assessment of civil penalties. We intend to work with the Congress, as recommended by the NRC Report, to clarify our authority with respect to civil penalties. While it would be extremely useful to be able to impose civil penalties administratively, especially as a tool to penalize delayed compliance in cases where unnecessary or undue degradation is ongoing or imminent, BLM can pursue alternate remedies such as injunctive relief, suspension orders under the regulations at 43 CFR 3715, and cooperative

enforcement agreements with states that do have civil penalty authority.

The new selected alternative retains the language from Alternative 3 regarding procedures for enforcement orders and criminal penalties. BLM believes the language regarding enforcement orders clarifies the sometimes cumbersome procedure related to notices of noncompliance in the 1980 regulations. The selected alternative also makes clear what constitutes prohibited acts under the regulations. BLM has decided to include language regarding criminal penalties in the selected alternative to make clear the potential criminal penalties for violation of the regulations. These penalties existed before the rulemaking.

Relying exclusively on the states' enforcement programs under Alternative 2 may have limited utility in achieving Federal land management or reclamation objectives. Conversely, state enforcement in such delegated programs as air quality or water quality may be more effective than BLM enforcement action. The selected alternative provides for cooperation with the state in order to quickly resolve noncompliance in these delegated programs areas.

Alternative 4 contains a requirement for mandatory enforcement. This means when a violation is observed in the field, the BLM inspector must issue a noncompliance and must assess a penalty. The problem with this approach is that there may be extenuating circumstances that an inspector should consider before taking an enforcement action, or it may be possible to resolve the violation in the field without issuing a notice of noncompliance. We did not select this mandatory enforcement provision. BLM believes the regulatory approach to compliance in Alternative 4 may actually hinder the resolution of compliance problems by providing an incentive for their concealment.

Federal/State Coordination

Most of the activity under the 3809 program occurs in the Western States. These states have regulatory programs applicable to mineral operations in the form of either specific regulations that apply to mining, overall environmental protection regulations for a specific resource such as water quality, or both. How the BLM surface management program is coordinated with the state programs is an issue that crosses all elements of the alternatives we considered. After consultation with the states, consideration of BLM resource protection needs, and evaluation of the various alternatives, we have decided to use the Federal/state coordination approach in Alternative 3.

The selected alternative provides a combination of Federal/state agreements that we can use to coordinate efforts, reduce duplication, and improve resource protection while not overly burdening the operator. The selected alternative provides for two types of Federal/state agreements, those that provide for joint administration of the program, and those in which BLM defers part or all of the program to the state (with BLM retaining minimum involvement). BLM selected this alternative to provide flexibility for the BLM field offices to develop their own Federal/state program specific to their states' operating and regulatory environment. By also incorporating state performance standards into the BLM performance standards, as described above, this alternative facilitates coordination between BLM and the state regulatory agencies when it comes to development and implementation of Federal/state agreements.

While the 1980 regulations (Alternative 1) provide for Federal/state agreements, we did not select it because such agreements do not require BLM to concur in the state's approval of each Plan of Operations; or in the approval, release, or forfeiture of a financial guarantee. In the 2000 rule, BLM concluded that retaining at least a concurrence role in these actions is the minimum we need to prevent unnecessary or undue degradation of the public lands.

Alternative 2 would leave review, approval, and enforcement for mineral operations to the respective state programs. Total reliance on state regulation may not be adequate to protect all the public land resources from unnecessary or undue degradation. BLM as a land manager has to meet a comprehensive requirement to protect all the resources on public lands from unnecessary or undue degradation. In addition, this would be a burden on the state for which BLM would not be able to provide compensation. For these reasons, we did not select Alternative 2.

BLM did not select Alternative 4 because it would assert Federal control over operations with only a minimal BLM effort to coordinate with state regulatory agencies. Such an approach could lead to conflicting, or at least confusing, standards for operators, and duplication of effort. Independent BLM standards would be difficult to administer because of the intermingling of private and public land that occurs at many mining operations. Alternative 4 could result in situations where two different performance requirements apply within the same operating area depending upon the land status. Nor does Alternative 4 result in substantial environmental benefits. Where the states have developed performance standards for mineral operations, they are generally considered adequate for operations on public lands. Where there are regulatory gaps in state standards or programs, development of a specific BLM requirement is warranted, but without wholesale replacement of the state standard.

Federal/state coordination under Alternative 5 would not differ greatly from the 1980 regulations. Alternative 5 would provide procedures for referral of enforcement actions to the state. However, it would not provide for retention of a minimal level of involvement by BLM in individual project approvals or financial guarantees. In the 2000 rule, BLM concluded this minimal level of participation is needed to meet its obligation to prevent unnecessary or undue degradation.

Consistency With the NRC Report

Since release of the NRC Report, ''Hardrock Mining on Federal Lands,'' recent Congressional appropriations acts have contained a requirement that any final 3809 regulations must be ''not inconsistent with'' the recommendations in the NRC Report. This Congressional requirement places some management constraints on the selection of a final alternative. Of the five alternatives in the Final EIS, only Alternatives 3 and 5 are not inconsistent with the recommendations in the NRC Report.

Alternative 1, retaining the 1980 regulations completely, would be inconsistent with the recommendations of the NRC Report. The NRC report identified specific gaps in the regulations and made six recommendations for regulatory changes. See the NRC Report, pages 7–9. BLM could not now decide to select the 1980 regulations, en toto, without being inconsistent with the NRC recommendations.

Alternative 2 would be inconsistent with most of the NRC recommendations. Alternative 2 does not provide reclamation bonding for all disturbance greater than casual use, does not provide for a Plan of Operations for all mining activity, does not provide for clear procedures for modifying plans of operations, and does not require interim management plans. The NRC report clearly recommends regulatory changes that are inconsistent with the decreased BLM role inherent in Alternative 2.

BLM has decided not to select Alternative 3, as presented in the Final EIS, due to legal and policy considerations and in light of the comments received. BLM has determined that we should remove the SIH standard as unnecessary and possibly needlessly burdensome to industry since other means exist to protect the resources covered by the SIH standard. In addition, BLM may not have the authority to implement the civil penalties provisions. Other changes to Alternative 3 reflect new policy choices.

Regulations developed under Alternative 4 would be more stringent than those suggested by the NRC and therefore would be inconsistent with the NRC recommendations. The Alternative 4 requirement to file a Plan of Operations for all activity greater than casual use would be inconsistent with the NRC finding that exploration involving less than 5 acres of disturbance should be allowed under a Notice. The use of design-based standards and mandatory pit backfilling under Alternative 4 would be inconsistent with the NRC recommendation that BLM use performance-based standards. It is also not in harmony with a discussion (which was not incorporated in a specific recommendation) of the NRC Report which suggested that pit backfilling should be determined on a case-by-case basis.

Alternative 5 was designed specifically to compare the impacts resulting from, and limited to, incorporating the specific recommendations in the NRC Report. Both Alternative 5 and the new selected alternative incorporate the NRC recommendations into the 3809 regulations. The main difference between these two alternatives is that Alternative 5 limits the changes in the regulations to the specific NRC recommendations, while Alternative 3 includes both the changes recommended by NRC and some additional regulatory changes that BLM believes are necessary to address program issues.

The new selected alternative for the 2001 regulations incorporates most of the requirements from Alternative 3, but removes the substantial irreparable harm provision in the definition of unnecessary or undue degradation. Other changes made to Alternative 3 are included in the new selected alternative. These additional changes reflect the Secretary's judgment as to what BLM requires to prevent unnecessary or undue degradation of the public lands. Because many regulatory sections are not addressed in the NRC Report, they would not be inconsistent with it. In addition, selection of the alternative for the 2001 regulations does not preclude BLM from pursuing the NRC suggestions for non-regulatory improvements to the surface management program.

In other portions of the preamble you can find additional discussion of how the NRC Report and Appropriations Act provisions affect today's final rule.

Determination of NEPA Adequacy

Since the final selected alternative represents a combination of several alternatives, this Record of Decision includes a review of the adequacy of the Final EIS in addressing the potential impacts that would occur under the 2001 regulations as compared to the impacts we analyzed under the range of alternatives in the FEIS. The table presented below shows how key regulatory provisions of the 2001 regulations are included in the analysis under one or more of the alternatives, and notes how impacts under the selected alternative compare with those predicted in the Final EIS. We have found that the impacts resulting from the new 2001 alternative, with respect to the baseline established by the 1980, as well as the change from the 2000 regulations, would fall within the range of impacts analyzed, and thus are not significantly different. All the provisions adopted in 2001 were options that could have been adopted in 2000. No significant new information or change in circumstances has occurred that would alter the analysis or findings in the FEIS. Based on this review, it is our determination that the Final EIS prepared in November 2000 provides adequate analysis of the impacts that would occur from implementation of the new selected alternative.

Changes From the 2000 Regulations

The determination of NEPA adequacy is prepared for this Record of Decision based upon the following changes to the 3809 regulations that were promulgated in 2000 under Alternative 3:

1. Revision of the definition of ''operator,'' and changes in the section on responsibilities under § 3809.116 to eliminate the joint and several liability provisions.

2. Removal of paragraph (4) of the definition of ''unnecessary or undue degradation,'' which defined unnecessary or undue degradation, in part, as causing substantial irreparable harm to significant scientific, cultural, or environmental resource values of the public lands that cannot be effectively mitigated. Also removal of similar language from sections 3809.415(d) and 3809.411(d)(3)(iii).

3. Revision of section 3809.420 on performance standards. Retain the general performance standards and the standards on acid-forming materials and leaching operations. Replace the other specific standards with performance standards from the 1980 regulations.

4. Removal of sections 3809.702 and 3809.703 regarding civil penalties from the 2000 regulations.

5. Other minor edits to correct errors or provide references to appropriate sections.

Comparison of EIS Alternatives and 2001 Regulations

The following table compares provisions of the 1980 regulations alternative, the 2000 regulations alternative, the NRC recommendation alternative and the 2001 regulation alternative. Immediately below the side-by-side comparison is an evaluation of the adequacy of the Final EIS in identifying and analyzing impacts that would result from selecting the 2001 regulations.

3809 Regulation Alternatives Comparison and Determination of NEPA Adequacy

Regulation component	EIS alternative 1: 1980 regulations	EIS alternative 3: 2000 regulations	EIS alternative 5: NRC recommendations	New selected alternative 2001 regulations
Casual Use Definition/Suction Dredging [3809.5].	Activities resulting only in negligible surface disturbance and not involving mechanized earthmoving equipment, explosives, or vehicle use in areas closed to off-road vehicles. Interior Board of Land Appeals (IBLA) has ruled that suction dredges are not casual use under the 1980 regulations.	Cumulative impacts could not exceed casual use level. Regulations would specify that small suction dredges could be casual use. BLM would not require a Notice or Plan for suction dredging if a state permit is required and BLM has a MOU with the state on suction dredging.	Same as Alternative 1.	Same as Alt. 3.
Adequacy of NEPA analysis: The 2001 regulations are the same as the 2000 regulations regarding casual use and suction dredging. Impacts from casual use activities are described in the Final EIS under Alternative 3. Requiring suction dredge operators to contact BLM would delay activity, increase operation costs, and restrict access of small miners and recreationists to minerals. There would be an estimated 5 to 10% decrease in overall casual use activity, with an up to 25% decrease in suction dredging activity. Anticipated environmental benefits include prevention of impacts to T&E species and their habitat, and a decrease in cumulative impacts from large numbers of casual use operators working in a single area.				
Definition of Project Area [3809.5].	A tract of land upon which operations are conducted. Includes area required for building or maintaining roads, powerlines, pipelines, or other means of access. Project area may include one or more mining claims, but claims must be under one ownership.	Changed to not specify that mining claims involved in a project be under single ownership.	Same as Alternative 1.	Retain language in 2000 regulations.
Adequacy of NEPA analysis: The definition of ''project area'' is covered under the analysis of Alt. 3 in the Final EIS. The definition was not identified during the EIS process as a significant impact to the environment or the operator. Intent of ''project area'' definition is to make sure that all support facilities are considered in the review and analysis processes.				
Definition of Operator [3809.5].	Operator means a person conducting or proposing to conduct operations.	Operator means any person who manages, directs or conducts operations at a project area, ... including a parent entity or an affiliate who materially participates in such management, direction, or conduct. An operator on a particular mining claim may also be the mining claimant.	Same as Alternative 1.	Same as Alternative 1. Remove 2000 Operator definition and joint and several liability in 3809.116. Return to 1980 operator definition. Operator means a person conducting or proposing to conduct operations.
Adequacy of NEPA analysis: The definition of ''operator'' is covered under the analysis of Alts. 1 and 5 in the Final EIS; although it was not identified as a significant EIS issue. The impact of the change in ''operator'' definition from the 2000 regulations to the 2001 regulations would only be significant where a reclamation liability existed that was not covered by a bond and BLM had to pursue legal action to obtain reclamation. The change in ''operator'' definition would make obtaining reclamation more difficult in these situations. However, we predict the number of such occurrences will be quite low given the improved financial guarantee regulations that were put in place with the 2000 regulations and would remain under the 2001 regulations.				
Definition of Public Lands (Lands where regulations would apply) [3809.5].	BLM-administered lands subject to the Mining Law. Does not include lands where only minerals or surface is federal, except that amendments to the Stock Raising Homestead Act require BLM involvement when surface owner does not consent to mineral development.	Expand definition to include lands where mineral estate is federal, subject to the Mining Law, and surface estate is private. Lands with reserved minerals from a sale or exchange could be open to operation of the Mining Law through a land use plan.	Same as Alternative 1.	Retain language in 2000 regulations.
Adequacy of NEPA analysis: This provision of the 2001 regulations is covered under the existing analysis of Alt. 3 in the Final EIS. Impacts to minerals are both positive, with the potential to open lands with reserved minerals to exploration and development; and negative, by increasing the amount of future operations that fall under the 3809 regulations. Impacts to non-mineral resources are generally positive, with additional environmental review for projects on the split-estate lands which were previously regulated by the states without BLM involvement.				
Unnecessary or Undue Degradation Definition (UUD) [3809.5].	Prudent operator standard. Follow ''usual, customary, and proficient'' measures. Mitigate impacts. Comply with environmental laws. Perform reclamation. Do not create a nuisance.	Replace prudent operator standard with requirement to comply with performance standards. Activity must be reasonably incident to prospecting, mining, or processing operations. Could not create substantial irreparable harm to significant scientific, cultural, or environmental resources that cannot be effectively mitigated.	Same as Alternative 1.	Definition of UUD is similar to 2000 regulations except delete paragraph (4) which defined unnecessary or undue degradation in part as causing substantial irreparable harm to significant scientific, cultural, or environmental resource values of the public lands that cannot be effectively mitigated. Also removal of similar language from § 3809.415(d) and § 3809.411(d)(3)(iii).
Adequacy of NEPA analysis: The change in the definition of ''unnecessary or undue degradation'' is covered by the analysis in the Final EIS of Alternative 5, with some impacts reflected in the Alternative 3 analysis. The 2001 definition would not be exactly the same as Alt. 5, which would have retained the 1980 UUD definition. The addition of the link to the performance standards in the UUD definition falls between Alt. 1 and Alt. 3. Impacts of the 2001 Alternative's definition of UUD is within the range of alternatives analyzed in the Final EIS, but not substantially different from those described for Alt. 5. The ''substantial irreparable harm'' provision in the UUD definition was responsible for a large portion of the reduction in mineral activity predicted for the 2000 regulations. Removal of this provision would result in mineral activity levels at slightly less than predicted under Alternative 5 (see Final EIS Table 2.3). The slightly lower activity levels from Alt. 5 are due to other provisions from the 2000 regulations which were retained in the 2001 regulations that would contribute to a reduction in mineral activity.				

3809 REGULATION ALTERNATIVES COMPARISON AND DETERMINATION OF NEPA ADEQUACY—Continued

Regulation component	EIS alternative 1: 1980 regulations	EIS alternative 3: 2000 regulations	EIS alternative 5: NRC recommendations	New selected alternative 2001 regulations
The overall acreage disturbed by mineral activity under the 2001 regulations would be at the lower end of the range described in Final EIS Table 2.3 for Alt. 5 at 8,120 to 9,630 acres per year. This would be less than the estimated 8,700 acres per year of disturbance that occurred under the 1980 regulations, but is greater than the 6,700 to 7,580 acres per year of disturbance that was predicted to occur under the 2000 regulations. While the intent was to invoke the ''substantial irreparable harm'' provision of the 2000 regulations only rarely, it was recognized that when it came to American Indian traditional cultural practices and resources the provision might be applied quite frequently. The Final EIS determined that the 2000 regulations would result in a moderate decrease in impacts to traditional cultural practices and resources, due at least in part to the definition of UUD (Final EIS, Table 2–3). Selection of the 2001 definition of UUD would instead result in impacts similar to those described for Alt. 5, which include a reduction in impacts from Notice operations to traditional cultural practices and resources when compared to the 1980 regulations.				
Notice vs. Plan of Operations Threshold [3809.11].	Surface disturbance less than 5 acres per calendar year requires a Notice. Plans required for more than 5 acres a year of disturbance or for any activity above casual use in special status areas such as ACECs, California Desert Conservation Area, wild and scenic rivers, wilderness areas, and areas closed to off-road vehicles.	Change threshold on the basis of division between exploration and mining. All mining, milling, and bulk sampling over 1,000 tons would require Plans. Exploration disturbing less than 5 acres would require Notices. Exploration in special status lands or disturbing more than 5 acres would require Plans. Expand special status lands to include: national monuments/conservation areas, and lands containing proposed or listed T&E species or their critical habitat.	Same as Alternative 3. Use 1980 special status lands.	Retain language in 2000 regulations.
Adequacy of NEPA analysis: Since there would be no change from the 2000 regulations, the impacts of the 2001 regulations are covered by the analysis in the Final EIS of Alt. 3. Impacts would not be quite the same as Alt. 5 due to the expansion of special category lands in the 2000 and 2001 regulations to include monuments and T&E species areas. Previously described impacts in the Final EIS note that: Notices only for exploration would drive up costs for small mine operators, bonding of Notices would increase exploration costs and reduce exploration activity, using a Plan of Operations to review all mines would increase likelihood that operations would meet the performance standards, costs and workload for operators and BLM would increase, and the bonds for reclamation would be adequate to ensure reclamation performance. These same impacts would occur under the 2001 regulations.				
Mining Claim Validity, Existing Rights, and Mine Economics [3809.100].	Not addressed in 3809 regs. Validity exams are required before Plan approval in wilderness areas per 8560 regulations. BLM has option of determining valid existing rights before approving Plans in segregated or withdrawn areas.	Require that validity exams determine valid existing rights before approval of Plans in areas withdrawn from operation of mining laws. Discretion to perform validity exams for segregated lands.	Same as Alternative 1.	Retain language in 2000 regulations.
Adequacy of NEPA analysis: This provision of the 2001 regulations is covered under the existing analysis of Alt. 3 in the Final EIS. BLM would conduct such exams to ensure that surface disturbance did not occur without prior existing valid mining claims on lands where a withdrawal was protecting nonmineral resources.				
Common Variety Minerals [3809.101].	Not addressed in 3809 regs. Policy provides for holding escrow during operations if materials to be mined may be of a common variety and subject to payment of fair market value.	Regulations would provide for holding escrow during operations if materials to be mined may be of a common variety and subject to payment of fair market value.	Same as Alternative 1.	Retain language in 2000 regulations.
Adequacy of NEPA analysis: This provision of the 2001 regulations is covered under the existing analysis of Alt. 3 in the Final EIS. BLM would protect potential Federal income from common variety minerals by establishing an escrow account.				
State and Federal Government Coordination [3809.201–204].	MOUs in each state provide for coordination for review, approval, bonding, monitoring, and enforcement. State may have lead for some program elements. Most restrictive requirements (BLM or state) apply.	When requested, BLM must give states the lead where state program is as strict as BLM requirements. BLM must concur on Plan approvals. BLM retains inspection and enforcement option and NEPA, NHPA, Tribal Govt.-Govt. coordination and T&E species responsibilities.	Same as Alternative 1. MOUs would be developed or modified to provide clear procedures for BLM to refer certain noncompliance actions to other federal and state agencies for enforcement.	Retain language in 2000 regulations.
Adequacy of NEPA analysis: This provision of the 2001 regulations is covered under the existing analysis of Alt. 3 in the Final EIS.				

3809 REGULATION ALTERNATIVES COMPARISON AND DETERMINATION OF NEPA ADEQUACY—Continued

Regulation component	EIS alternative 1: 1980 regulations	EIS alternative 3: 2000 regulations	EIS alternative 5: NRC recommendations	New selected alternative 2001 regulations
Applying Regulation Changes to Existing Operations or Facilities [3809.300] [3809.400] [3809.433–434].	Not applicable	Existing Notices expire in 2 years unless bonded and extended. Existing Notices for mining are not required to refile as a Plan if disturbance area does not increase. Existing Plans, pending Plans, or Plan modifications need not comply with new performance standards if filed before effective date of new regulations. All existing Plans would have to meet new bonding requirements. New mine facilities added to existing Plans after effective date would have to meet new regulation requirements. Modifications to existing mine facilities after effective date would have to comply with new regulations unless shown not practical for economic, environmental, safety, or technical reasons.	Same as Alternative 3 but without new performance standards. Existing Plans, pending Plans, or Plan modifications would be subject to new regula-tions and would have to meet new bonding requirements within 180 days of effective date of new regulations. Modifications to existing mines after effective date would have to comply with new regulations unless shown not practical for economic, environmental, safety, or technical reasons.	Retain language in 2000 regulations.
Adequacy of NEPA analysis: This provision of the 2001 regulations is covered under the existing analysis of Alt. 3 in the Final EIS.				
Notice and Plan of Operations Contents and Processing [3809.301–313] [3809.401–412].	BLM review of Notices required in 15 calendar days. Plans, 30 days, with option of 60 more days. Open-ended time frame for Plans for NEPA (EIS), NHPA, and T&E species compliance. Public comment period on EA if BLM determines there is substantial public interest.	Expanded detail on Notice and Plan contents. Includes plans for interim management during temporary closures. Operators also required to provide all studies/data BLM needs to comply with NEPA. Review Plan for completeness within 30 days. Notice time frame 15 days. Clarify review time frames begin when complete Notice or Plan is received. Mandatory public comment period on all Plans for at least 30 days.	Same as Alternative 1. Must provide interim management plans for periods of temporary closure.	Retain language in 2000 regulations. Edits to reflect other changes in definition of unnecessary or undue degradation.
Adequacy of NEPA analysis: The impact of the Notice or Plan content and review requirements is covered under the existing analysis of Alt. 3 in the Final EIS. The regulatory language regarding denial on the basis a plan violating the SIH standard is revised from the 2001 regulations to reflect the change in definition of UUD described previously. However, the processing steps would remain the same as described for the 2000 regulations up to the decision point where the option of denial due to substantial irreparable harm is no longer available. The potential for denial or non-acceptance of Plans and Notices was the main reason for the number of projected Notices and Plans in Final EIS Table 2–3 to be lower for Alt. 3 compared to Alt. 5. With the new UUD definition in the 2001 regulations the number of Notices and Plans processed is anticipated to be between the numbers shown under Alt. 3 and Alt. 5 in Final EIS Table 2–3, but probably much closer to Alternative 5. It is therefore estimated that the 2001 regulations would result in an average of 360 to 380 Notices per year and 340 to 360 Plan per year. The content and processing requirement for these Plans and Notices would result in a more comprehensive review and better protection of resources than would occur using the 1980 regulations, and would be nearly the same as that which would occur under the 2000 regulations.				
Modifications [3809.330–331] [3809.430–431].	Operator-initiated modifications are processed similar to original Notice or Plan. Agency-required modifications must show need and that the issue was unforeseen at the time of initial Plan approval.	Eliminated requirement for BLM to show unforeseen issues that warrant modification. BLM may require operator to modify Notice or Plan to prevent unnecessary or undue degradation (UUD). Only test is that the modification is needed to prevent UUD. Plan modifications required at final closure to address unanticipated conditions or new information.	Same as Alternative 3.	Retain language in 2000 regulations.
Adequacy of NEPA analysis: This provision of the 2001 regulations is covered under the existing analysis of Alt. 3 in the Final EIS.				

3809 REGULATION ALTERNATIVES COMPARISON AND DETERMINATION OF NEPA ADEQUACY—Continued

Regulation component	EIS alternative 1: 1980 regulations	EIS alternative 3: 2000 regulations	EIS alternative 5: NRC recommendations	New selected alternative 2001 regulations
Temporary or Permanent Closure [3809.334] [3809.336] [3809.424].	Site must be maintained in safe and clean condition. May require removal of all structures and equipment, and site reclamation after unspecified period of nonoperating.	Must follow interim management plans during periods of temporary closure. Notices expire after 2 years. BLM may consider projects abandoned, depending on time and condition of sites and equipment. Plans are similar to Notices. After 5 consecutive years of inactivity, Plans may be terminated.	Same as Alternative 3.	Retain language in 2000 regulations.
Adequacy of NEPA analysis: This provision of the 2001 regulations is covered under the existing analysis of Alt. 3 in the Final EIS.				
Financial Guarantee Requirement (Bonding) [3809.500—.599].	Bonds required only for Plans at BLM's discretion. Expired policy limits bond amounts to $1,000/acre for exploration and $2,000/acre for mining, except for areas with cyanide use or BEEN potential which are bonded at 100% estimated BLM reclamation cost. Use state bonding programs to meet these requirements through agreements.	Actual-cost bonding required for all Notices and Plans. Operator would provide initial reclamation cost estimate. Financial guarantee must cover 100% of reclamation costs, including any post-closure water treatment or other site maintenance. Equivalent state bonding instruments could be used to meet requirements, but must be redeemable by the Secretary of the Interior. Discontinue accepting corporate guarantees.	Same as Alternative 3.	Retain language in 2000 regulations; and the changes made in the time frames under regulations promulgated on June 15, 2001 for existing operations to meet the new bonding requirements.
Adequacy of NEPA analysis: This provision of the 2001 regulations is covered under the existing analysis of Alt. 3 in the Final EIS.				
Inspection and Monitoring [3809.600].	Operators must allow BLM to inspect operations. Policy is for inspections four times annually where cyanide is used or significant potential for acid rock drainage and twice annually for all other operations. Monitoring programs are developed during Plan review. The operator conducts environmental testing (water, air, soil, etc.) and submits the results to BLM. BLM may take check samples during inspections.	Same as Alternative 1. Add: Mandate current policy of inspections four times annually where cyanide is used or potential exists for acid rock drainage.	Same as Alternative 1.	Retain language in 2000 regulations.
Public Mine Visits [3809.900].		Upon prior notification to BLM, in certain circumstances, may allow the public to annually tour mines.		
Adequacy of NEPA analysis: The inspection, monitoring, and public mine tour provisions of the regulations are covered under the existing analysis of Alt. 3 in the Final EIS.				
Type and Adequacy of Penalties for Non-compliance [3809.700].	BLM issues notices and records of noncompliance. Federal injunctions and criminal prosecution may be used.	Similar to Alternative 1. Add: BLM would issue discretionary administrative penalties ($5,000/day), suspensions, revocation of Plan approval, and nullification of Notice for failure to comply with enforcement orders. Under MOUs, BLM would refer certain noncompliance actions to other federal and state agencies for enforcement.	Same as Alternative 3. No additional regulations on criminal penalties. Use current criminal penalties process (Alt. 1).	Delete the civil administrative penalties in sections 3809.702 and 3809.703 Add reminder in 3809.421 that failure of the operator to prevent undue or unnecessary degradation or to complete reclamation to the standards described in this subpart may cause the operator to be subject to enforcement actions. This was in the 1980 regulations.
Adequacy of NEPA analysis: The penalties provision of the regulations is covered under the existing analysis of Alt. 1 in the Final EIS. The deletion of civil penalties from the 2000 regulations leaves only a criminal penalty framework which most closely resembles that which was used in the 1980 regulations per Alt. 1. Difficulties with enforcement using only criminal penalty provisions would continue as described in the Final EIS under Alt. 1. New section 3809.421 does not change any operator requirements or create any additional level of environmental protection over that presented in the 2000 regulations.				

3809 REGULATION ALTERNATIVES COMPARISON AND DETERMINATION OF NEPA ADEQUACY—Continued

Regulation component	EIS alternative 1: 1980 regulations	EIS alternative 3: 2000 regulations	EIS alternative 5: NRC recommendations	New selected alternative 2001 regulations
Appeals Process [3809.800].	BLM decisions must be appealed within 30 days. Operators must appeal to BLM state director, then to the Interior Board of Land Appeals (IBLA). Third-party appeals of BLM decisions are made to IBLA. BLM's decision is in full force and effect during an appeal, unless IBLA grants a written request for a stay.	Both operator and third parties could request a state director review of any decisions, or appeal directly to IBLA. State Director decisions could also be appealed to IBLA. All decisions would be in full force and effect unless a written request for a stay is granted by the reviewing entity (state director or IBLA).	No Change. Same as Alternative 1.	Retain language in 2000 regulations.
Adequacy of NEPA analysis: This provision of the 2001 regulations is covered under the existing analysis of Alt. 3 in the Final EIS.				
Performance Standards, Generally [3809.420].	Prevent unnecessary or undue degradation. Follow requirements at 3809.1–3(d). Other site-specific requirements may be developed during individual project review.	Outcome-based standards with site-specific allowances. Includes BLM cyanide and acid rock drainage requirements. Use proper equipment, devices, and practices. Follow reasonable and customary sequence of exploration, development, and reclamation.	Same as Alternative 1.	Retain language in 2000 regulations regarding general performance standards. Add reminder that operations must be conducted in compliance with all Federal and state laws Retain the performance standards in the 2000 rule related to BEEN and cyanide management. Combine them with the 1980 performance standards.
Adequacy of NEPA analysis: The rewritten performance standards in the 2001 regulations are covered by analysis under either Alts. 1, 3, or 5 in the Final EIS. In overall effect, the performance standards most closely resemble those put forward in Alt. 3, the 2000 regulations, with some of the performances standards from the 1980 regulation rewritten in Plain English and presented as they would be used under Alt. 5. There would not be a substantial change in environmental protection, environmental impact, or operator requirements in going from the 2000 regulations to the 2001 regulations for several reasons. One, the two sets of regulations have performance requirements that are very similar, and in some cases identical. And two, performance requirements for mineral operations are not set until completion of the individual project review process. The actual performance standards in the regulations serve mostly as a guide for the site specific requirements. This is especially true with ''outcome-based'' performance standards such as those in Alts. 1, 3, and 5. A comparison of the individual performance standards follows:				
Land Use Plans	Not addressed	Consistent with the Mining Law, operations and postmining land use must comply with land use plans and coastal zone management plans.	Same as Alternative 1.	Retain language in 2000 regulations.
Adequacy of NEPA analysis: This provision of the 2001 regulations is covered under the existing analysis of Alt. 3 in the Final EIS.				
Surface and Ground Water Protection.	All operators must comply with federal and state water quality standards.	Same as Alternative 1, plus pit water quality must not endanger wildlife, public water supplies, or users.. To meet this standard, operators would use operation and reclamation practices that minimize water pollution and changes in flow in preference to water treatment or replacement.	Similar to Alt. 1 plus:. Project approvals would establish acceptable postclosure water quality conditions for pit lakes suitable to long-term use of the site and those needed to adequately protect ground and surface waters, as well as wildlife and waterfowl.	Water quality. All operators shall comply with applicable Federal and state water quality standards, including the Federal Water Pollution Control Act, as amended (30 U.S.C. 1151 et seq.).
Adequacy of NEPA analysis: This provision of the 2001 regulations is covered under the existing analysis of Alt. 1 in the Final EIS.				
Wetlands and Riparian Area Protection.	Not specified. State and 404 permits (from the Army Corps of Engineers) must be acquired for dredging or filling in U.S. waters.	Same as Alternative 1 with specific site-selection criteria added:. Operator must: (1) avoid locating operations in wetlands and riparian areas where possible, (2) minimize impacts to wetlands and riparian areas, and (3) mitigate damage to wetlands and riparian areas through measures such as restoration or off-site replacement.	Same as Alternative 1.	Same as Alt. 1. No specific standard for a riparian area.
Adequacy of NEPA analysis: This provision of the 2001 regulations is covered under the existing analysis of Alts. 1 and 5 in the Final EIS.				

3809 REGULATION ALTERNATIVES COMPARISON AND DETERMINATION OF NEPA ADEQUACY—Continued

Regulation component	EIS alternative 1: 1980 regulations	EIS alternative 3: 2000 regulations	EIS alternative 5: NRC recommendations	New selected alternative 2001 regulations
Soil or Growth Media Handling.	Where reasonably practicable, topsoil must be saved and reapplied to disturbed areas after areas have been reshaped.	Topsoil or other growth media must be removed, segregated, and preserved for later use in revegetation during reclamation. Must transport soil from original location to point of reclamation without stockpiling where economically and technically feasible.	Same as Alternative 1.	Same as Alternative 1.
Adequacy of NEPA analysis: This provision of the 2001 regulations is covered under the existing analysis of Alts. 1 and 5 in the Final EIS.				
Revegetation Requirements.	Where reasonable and practicable, disturbed areas must be revegetated. Revegetation is to provide a diverse vegetation cover and is a component of the requirement to rehabilitate wildlife habitat. Ban on creating a nuisance would be used to address noxious weed control.	Same as Alternative 1 with more specifics on outcome. All disturbed lands must be revegetated to establish a stable and long-lasting cover that is self-sustaining and comparable in both diversity and density to preexisting natural vegetation. Use native species to the extent feasible and establish success according to schedule in reclamation plan. Operations must prevent and control noxious weed infestations.	Same as Alternative 1.	Same as Alternative 1.
Adequacy of NEPA analysis: This provision of the 2001 regulations is covered under the existing analysis of Alts. 1 and 5 in the Final EIS.				
Fish, Wildlife and Plant Protection and Habitat Restoration.	Operator must act to prevent adverse impacts to threatened and endangered species and their habitats that might be affected by operations.. Reclamation must include rehabilitating fisheries and wildlife habitat.	Similar to Alternative 1, plus: ..... Operators must minimize disturbances and adverse impacts to fish, wildlife, and related environmental values.. All processing solutions, reagents, or mine drainage toxic to wildlife must be fenced or netted to prevent wildlife access.	Same as Alternative 1.	Same as Alternative 1.
Adequacy of NEPA analysis: This provision of the 2001 regulations is covered under the existing analysis of Alts. 1 and 5 in the Final EIS.				
Protecting Cultural Resources.	National Historic Preservation Act Section 106 process used to develop mitigation for cultural resources found before Plan approval. Operators cannot knowingly disturb, alter, injure, or destroy any historical or archaeological site, structure, building, object, or cultural site discovered during operations. Operators must immediately notify BLM of any cultural resources found during operations and must leave such discoveries intact. BLM has 10 working days to protect or remove discovery at the government's cost, after which operations may proceed.	Same as Alternative 1, except 30 calendar days instead of 10 working days would be allowed for data recovery. BLM would determine who bears cost of recovery on a case-by-case basis.	Same as Alternative 1.	Same as Alternative 1.
Adequacy of NEPA analysis: This provision of the 2001 regulations is covered under the existing analysis of Alts. 1 and 5 in the Final EIS.				
Protecting Paleontological Resources.	Operators cannot knowingly disturb, alter, injure, or destroy any scientifically important paleontological remains. Operators must immediately notify BLM of any paleontological resources discovered during operations and must leave such discoveries intact. BLM has 10 working days to protect or remove discoveries at the government's cost, after which operations may proceed.	Same as Alternative 1, except 30 calendar days instead of 10 working days would be allowed for data recovery. BLM would determine who bears cost of recovery on a case-by-case basis.	Same as Alternative 1.	Same as Alternative 1.
Adequacy of NEPA analysis: This provision of the 2001 regulations is covered under the existing analysis of Alts. 1 and 5 in the Final EIS.				

3809 REGULATION ALTERNATIVES COMPARISON AND DETERMINATION OF NEPA ADEQUACY—Continued

Regulation component	EIS alternative 1: 1980 regulations	EIS alternative 3: 2000 regulations	EIS alternative 5: NRC recommendations	New selected alternative 2001 regulations
Protecting Cave Resources.	Not specified.	Inventories and mitigation plans would be required before disturbance of cave resources. Operators must immediately notify BLM of any significant cave resources found during operations and leave such discoveries intact. BLM has 30 calendar days to protect a discovery, after which operations may proceed. BLM would determine who bears the cost for protecting cave resources.	Not specified. Same as Alternative 1.	Not specified. Same as Alt. 1.
Adequacy of NEPA analysis: This provision of the 2001 regulations is covered under the existing analysis of Alts. 1 and 5 in the Final EIS.				
American Indian Traditional Cultural Values, Practices, and Resources.	Not specified in regulations. Consultation with American Indians is used to develop mitigation on a case-by-case basis.	Consultation with American Indians is specified as part of Plan review process. (3809.411(a)(3)). Consultation would be used to develop mitigation on a case-by-case basis where mitigation is possible.	Same as Alternative 1.	Retain language in 2000 regulations.
Adequacy of NEPA analysis: This provision of the 2001 regulations is covered under the existing analysis of Alt. 3 in the Final EIS.				
Roads and Structures.	Access routes for only the minimum width needed for operations and shall follow natural contours to minimize cut and fill. Require the use of existing roads to minimize the number of access routes, and to construct access roads within a designated transportation or utility corridor. When commercial hauling is involved on public road the operator may be required to make arrangements for use and maintenance. Operators must consult with BLM for roadcuts greater than 3 feet on inside edge. All structures must be built and maintained according to state and local codes. Structures are addressed in separate rules at 43 CFR 3715.	Generally the same as Alt. 1 without the requirement to consult with BLM for roadcuts greater than 3-feet.	Same as Alternative 1.	Same as Alt. 1.
Adequacy of NEPA analysis: This provision of the 2001 regulations is covered under the existing analysis of Alts. 1, 3, and 5 in the Final EIS.				
Handling of Potentially Acid-Forming, Toxic, or Other Deleterious Materials.	Reclamation must include measures to isolate, remove, or control toxic or deleterious materials. Other requirements imposed would be based on site-specific review according to BLM policies [acid rock drainage (BEEN) policy].	Includes requirements from BEEN policy. Static or kinetic testing must be used to identify and guide handling and placement of potentially acid-forming materials. BEEN control measures must be fully integrated with operational procedures, facility design, and environmental monitoring programs. BEEN control must focus on prevention or control of acid-forming reaction. If formation of BEEN cannot be prevented, its potential migration must be prevented or controlled. Capture and treatment of BEEN or other undesirable effluent is required if source controls and migration controls do not prove effective. Effluent treatment could be used only after source control has been employed.	Same as Alternative 1.	Retain language in 2000 regulations.
Adequacy of NEPA analysis: This provision of the 2001 regulations is covered under the existing analysis of Alt. 3 in the Final EIS. Retaining the performance requirements for handling of potentially acid-forming, toxic, or other deleterious materials in the 2001 regulations, along with the Plan content requirements for information on acid drainage potential, would maintain protection of environmental resources at essentially the same level as the 2000 regulations.				

3809 REGULATION ALTERNATIVES COMPARISON AND DETERMINATION OF NEPA ADEQUACY—Continued

Regulation component	EIS alternative 1: 1980 regulations	EIS alternative 3: 2000 regulations	EIS alternative 5: NRC recommendations	New selected alternative 2001 regulations
Leaching and Processing Operations and Impoundment.	Reclamation must include measures to isolate, remove, or control toxic or deleterious materials. Other requirements imposed would be based on site-specific review according to BLM policies [cyanide management policy, BLM state cyanide management plans, and acid rock drainage (BEEN) policy].	Incorporated requirements of BLM's cyanide policy: Cyanide facilities must be able to contain maximum operating solution with capacity for the 100-year, 24-hour storm event, including snowmelt events and expected draindown from heaps during power outages. Secondary containment required for vats, tanks, or recovery circuits to prevent release of toxic solutions. Heaps and other solution containment structures must be monitored for leaks. Cyanide solution and heaps must be detoxified upon release to the environment, at temporary closure, or at final reclamation. Operations must not cause wildlife mortality. Exposed cyanide solutions must be fenced and covered to prevent access by public, wildlife, and livestock. Neutralization may be used in lieu of fencing tailings impoundments.	Same as Alternative 1.	Retain language in 2000 regulations.
Adequacy of NEPA analysis: This provision of the 2001 regulations is covered under the existing analysis of Alt. 3 in the Final EIS. Retaining the performance requirements for leaching and processing operations in the 2001 regulations, along with the Plan content requirements for information facility design and reclamation, would maintain protection of environmental resources at essentially the same level as the 2000 regulations.				
Stability, Grading, and Erosion Control.	Reclamation must include measures to control erosion, landslides, and runoff.	Erosion must be minimized during all phases of operations. All disturbed areas must be graded or otherwise engineered to a stable condition to minimize erosion and facilitate revegetation. All areas must be recontoured to blend in with the premining natural topography to the extent practical.	Same as Alternative 1.	Same as Alternative 1.
Adequacy of NEPA analysis: This provision of the 2001 regulations is covered under the existing analysis of Alts. 1 and 5 in the Final EIS.				
Pit Backfilling and Reclamation.	Not specified. Stable highwall might be left where required to preserve evidence of mineralization. Current practice is to determine amount of pit backfilling on case-by-case basis.	BLM would determine degree of backfilling required, if any, from a site-specific operator demonstration of feasibility based on economic, environ-mental, and safety considerations. Mitigation would be required for pit areas that are not backfilled.	Same as Alternative 1. Amount of pit backfilling determined on a case-by-case basis.	Same as Alternative 1. Amount of pit backfilling determined on a case-by-case basis.
Adequacy of NEPA analysis: This provision of the 2001 regulations is covered under the existing analysis of Alts. 1 and 5 in the Final EIS.				
Waste Rock, tailings, and leach pads.	Mining wastes. All tailings, dumps, deleterious materials or substances, and other waste produced by the operations shall be disposed of so as to prevent unnecessary or undue degradation and in accordance with applicable Federal and state laws.	Must locate, design, construct, operate and reclaim to minimize infiltration and contamination of water, achieve stability; and to the extent economically and technically feasible, blend with the pre-mining natural topography.	Same as Alternative 1.	Same as Alternative 1.
Adequacy of NEPA analysis: This provision of the 2001 regulations is covered under the existing analysis of Alts. 1 and 5 in the Final EIS.				
Drill Holes	Exploration operations and drill hole plugging are not specified. Decided on case-by-case basis during Notice or Plan review.	All drill cuttings and mud must be contained onsite. All exploration drill holes must be plugged to prevent mixing of waters from aquifers, impacts to beneficial uses, downward water loss, or upward loss from artesian conditions. Bore holes must be plugged on the surface to prevent direct inflow of surface water and to eliminate the open hole as a hazard.	Same as Alternative 1.	Same as Alternative 1.
Adequacy of NEPA analysis: This provision of the 2001 regulations is covered under the existing analysis of Alts. 1 and 5 in the Final EIS.				

3809 REGULATION ALTERNATIVES COMPARISON AND DETERMINATION OF NEPA ADEQUACY—Continued

Regulation component	EIS alternative 1: 1980 regulations	EIS alternative 3: 2000 regulations	EIS alternative 5: NRC recommendations	New selected alternative 2001 regulations
Solid Wastes	All operators shall comply with applicable Federal and state standards for the disposal and treatment of solid wastes. All garbage, refuse or waste shall either be removed from the affected lands or disposed of or treated to minimize, so far as is practicable, its impact on the lands.	Must comply with Federal, state, and where delegated by the state, local standards for the disposal and treatment of solid wastes. Must remove from the project area, dispose of, or treat all non-mine garbage, refuse or waste to minimize their impact.	Same as Alternative 1.	Same as Alternative 1.
Adequacy of NEPA analysis: This provision of the 2001 regulations is covered under the existing analysis of Alts. 1 and 5 in the Final EIS.				
Protection of survey monuments.	To the extent practicable, all operators shall protect all survey monuments, witness corners, reference monuments, bearing trees and line trees against unnecessary or undue destruction, obliteration or damage. If, in the course of operations, any monuments, corners, or accessories are destroyed, obliterated or damaged by such operations, the operator shall immediately report the matter to the authorized officer. The authorized officer shall prescribe, in writing, the requirements for the restoration or reestablishment of monuments, corners, bearing and line trees.	To the extent economically and technically feasible, you must protect all survey monuments, witness corners, reference monuments, bearing trees, and line trees against damage or destruction. If you damage or destroy a monument, corner, or accessory, you must immediately report the matter to BLM. BLM will tell you in writing how to restore or re-establish a damaged or destroyed monument, corner or accessory.	Same as Alternative 1.	Same as Alternative 1.
Adequacy of NEPA analysis: This provision of the regulations is essentially covered under the existing analysis of Alts. 1, 3, and 5 in the Final EIS.				
Fire Prevention and control.	The operator shall comply with all applicable Federal and state fire laws and regulations, and shall take all reasonable measures to prevent and suppress fires in the area of operations.	You must comply with all applicable Federal and state fire laws and regulations, and take all reasonable measures to prevent and suppress fires in your area of operations.	Same as Alternative 1.	Same as Alternative 1.
Adequacy of NEPA analysis: This provision of the 2001 regulations is covered under the existing analysis of Alts. 1, 3, and 5 in the Final EIS.				
Air Quality	All operators shall comply with applicable Federal and state air quality standards, including the Clean Air Act (42 U.S.C. 1857 et seq.).	Your operations must comply with applicable Federal, Tribal, state, and where delegated by the state, local government laws and requirements.	Same as Alternative 1.	Same as Alternative 1.
Adequacy of NEPA analysis: This provision of the 2001 regulations is covered under the existing analysis of Alts. 1, 3, and 5 in the Final EIS.				

One comment stated that the joint and several liability provision in section 3809.116(a) would cause severe disincentives to mineral exploration activities, a ''significant factor'' that should have been analyzed in the draft environmental impact statement. We have removed this provision from paragraph (a).

The Environmental Protection Agency commented on the proposed suspension of the 2000 rule, focusing on two main issues:

(1) EPA suggested ''that the new financial assurance requirements not be suspended but be continued'; and

(2) EPA stated that by amending the definition of ''unnecessary or undue degradation'' to include ''a proposed activity that would cause substantial irreparable harm,'' the 2000 rule ''significantly enhanced BLM's ability to prevent serious and foreseeable environmental harm.'' EPA requested BLM to ''consider these important measures and protections in its review of the 3809 regulations.''

The final rule of June 15, 2001, as stated earlier in this preamble, maintains the financial assurance provisions of the 2000 rule.

Although this final rule removes the substantial irreparable harm provision in the definition of unnecessary or undue degradation, BLM retains ample authority to protect surface resources and the environment. As we stated earlier, in the discussion of public comments, BLM has ample statutory and regulatory means of preventing harm to significant scientific, cultural, or environmental resource values: The Endangered Species Act, the Archaeological Resources Protection Act, withdrawal under Section 204 of FLPMA, the performance standards in section 3809.420, and so forth. Many statutory protections are invoked in the performance standards in section 3809.420.

The revision of section 3809.420 removes duplicative requirements for environmental protection. For example, paragraph (b)(7), on fisheries, wildlife, and plant habitat explicitly protects only threatened and endangered species, while the 2000 rule required that the operator ''must minimize disturbances and adverse impacts on [all] fish, wildlife, and related environmental values.'' However, the requirements that the operator must comply with the Clean Water Act, Clean Air Act, and other environmental laws and regulations will have the same effect. The final rule removes unnecessary language.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980, as amended, 5 U.S.C. 601–612, (RFA) to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires

a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. BLM prepared a regulatory flexibility analysis on the expected impact of the final 2000 rule on small entities and determined that the final regulations will have a significant economic effect on a substantial number of small entities, and summarized it in the 2000 rule (65 FR 69998, 70103). The regulatory flexibility analysis remains on file in the BLM Administrative Record at the address specified in the **ADDRESSES** section. In this final rule we have made changes that should reduce the burdens on small entities. The regulations no longer provide for joint and several liability for violations of the regulations, no longer provide for civil liability for violations, simplify the definition of ''operator,'' and reduce the burdens of performance standards.

The Small Business Administration (SBA) commented in support of the proposed rule to suspend the 2000 rule. The principal substantive objection of the SBA was to the definition of ''unnecessary or undue degradation'' and the inclusion in it of ''substantial irreparable harm'' as an element. Removing this element from the definition in this final rule should obviate this objection.

One comment stated that BLM must consider ''the impact of the new regulations on small farmers and ranchers, as well as recreation-based businesses,'' in our regulatory flexibility analyses. Since these regulations have little or nothing to do, per se, with the operations of these kinds of business, the unstated implication of this comment is that changing the compliance standards for mining operators might somehow degrade the environment upon which these businesses largely depend.

As discussed earlier in the preamble, we are not abandoning surface resource protection and environmental protection by removing some onerous provisions in the 2000 rule and replacing them with provisions that functioned well for 20 years. Operators must maintain air and water quality to the standards established by Congress in the Clean Air Act and the Clean Water Act, and must manage solid wastes in accordance with the Solid Waste Disposal Act and the Resource Conservation and Recovery Act. These concerns are those most vital to the business interests mentioned in the comment.

Small Business Regulatory Enforcement Fairness Act

Evaluated against the baseline of the 2000 rule, BLM has concluded that today's rule will not have a significant economic impact on a substantial number of small entities. This rule should reduce the costs borne by small entities relative to the 2000 rule. However, the magnitude of the cost reductions depends on site and operation specific factors. The removal of the SIH provision will benefit small entities. As stated earlier, the SBA objected to the 2000 rules primarily because of the SIH provision. Today's action obviates that objection and benefits small entities.

Unfunded Mandates Reform Act

In the 2000 final rule (65 FR 69998, 70109), BLM found that those final regulations do not impose an unfunded mandate on state, local, or tribal governments or the private sector of more than $100 million per year; nor do these final regulations have a significant or unique effect on state, local, or tribal governments or the private sector. The impacts of this final rule do nothing to change that finding. Therefore, BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*). None of the comments we received from state governmental entities or associations of such entities alleged any unfunded mandates in the 2000 rule.

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

In the 2000 final rule (65 FR 69998, 70109), BLM found that those final regulations do not represent a government action capable of interfering with constitutionally protected property rights. We stated that it doesn't affect property rights or interests in property, such as mining claims; it governs how an individual or corporation exercises those rights. However, one comment on the proposed suspension of the 2000 rule stated that the joint and several liability provision in section 3809.116(a) would diminish the property value by severely restraining alienation and thus amount to a taking in violation of the Fifth Amendment of the Constitution. We have removed this provision in this final rule. Because this final rule does not make any changes that increase the burdens on mining claim owners or other property owners, the Department of the Interior has determined that the rule would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism

In the 2000 rule, BLM found (65 FR 69998, 70109) that it would have federalism implications in that in certain circumstances it may preempt state law. However, we found further that it would not have a substantial direct effect on the states, on the relationship between the Federal Government and the states, or on the distribution of power and responsibilities among the various levels of government. The 2000 rule describes the consultation BLM engaged in with the states and the results of that consultation. The changes made in this final rule and in the final rule of June 15, 2001 (66 FR 32571), will not increase burdens on states, and will facilitate cooperation between states and the United States in the area of surface management of mining claims. This final rule does not change the findings in the 2000 rule. This rule does not change the regulations in a manner contrary to the interests of the states as found from consultation with the states.

Further, we received comments from governors, agencies, or legislatures of or Members of Congress from the following Western States, as well as the Western Governors' Association: Alaska, Idaho, Nevada, Utah, and Wyoming. These comments were critical of the 2000 regulations and supported their suspension and revision. Only one of these provided detailed recommendations that largely tracked those of the NRC. To the extent that those specific recommendations pertain to BLM, or are within the legal responsibility of BLM, we believe this final rule follows those recommendations.

BLM's full Federalism assessment, performed on the 2000 rule, remains on file in the BLM Administrative Record at the address specified in the **ADDRESSES** section.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the Office of the Solicitor has determined that this final rule would not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

We rely in part on Tribal consultation that occurred before publication of the 2000 rule. In accordance with Executive

Order 13175, we have also found that this final rule does not include policies that have significant tribal implications. We have made clear that plans of operations under these regulations must comply with state, local, Tribal, and other Federal requirements. Although removing the SIH standard could potentially affect Native American cultural resources on the public lands, in most instances mitigation measures will be possible to reduce such impacts.

In public comments, two tribes strongly opposed the idea of rescinding the 2000 regulations and reverting to the 1980 regulations. In this final rule, we are not reissuing the 1980 regulations. Rather, we are removing or revising a limited number of provisions that:

(a) Courts have been asked to find legally untenable;

(b) Are expected to have severe impacts on employment in Western States where mining is an important industry and a source of employment for Indians and non-Indians alike; and

(c) BLM does not need in the regulations in order to prevent unnecessary or undue degradation of the public lands or to limit the impact of mining on Tribes.

One of the comments said that members of the Tribe in question ''regard salmon as essential to their spiritual and physical well-being,'' and said that maintenance of environmental resources, especially water quality and salmon, is of great importance. Although we have removed the SIH provision from the definition of unnecessary or undue degradation because of the uncertainty and possible economic disruption it causes for the mining industry, we have retained the performance standards in section 3809.420 that are designed to preserve water quality: paragraph (b)(5) which requires operators to comply with Federal and state water quality standards; paragraph (b)(11), which is designed to prevent acid rock drainage into the watershed; and paragraph (b)(12), which is intended to prevent cyanide leaching into the watershed. These provisions provide ample protection to western streams that are habitat for salmon. Retaining these provisions should fully address the Tribe's concerns.

E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This rule is not a significant energy action. It will not have an adverse effect on energy supplies. The principal changes proposed in the rule address (1) the definition of an operator, what entities are responsible for reclamation and other duties, (2) the definition of unnecessary or undue degradation, and (3) performance standards that operators must follow. To the extent that the rule affects the mining of energy minerals (*i.e.,* uranium and other fissionable metals), they will tend to increase production marginally.

Paperwork Reduction Act

The 2000 final rule (65 FR 69998, 70111) stated that it required collection of information from 10 or more persons. It went on to discuss our compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), and the public comments that discussed the information collection requirements. We continue to rely on the discussion in the 2000 rule as to information collection requirement matters. The Office of Management and Budget has approved those information collection requirements in the final rule under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*, and has assigned clearance number 1004–0194. This final rule does not contain additional information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995.

Author

The principal authors of this rule are members of the Departmental 3809 Task Force, chaired by Robert M. Anderson, Deputy Assistant Director, Minerals, Realty, and Resource Protection, Bureau of Land Management.

List of Subjects in 43 CFR Part 3800

Administrative practice and procedure, Environmental protection, Intergovernmental relations, Land Management Bureau, Mines, Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds, Wilderness areas.

P. Lynn Scarlett,

Assistant Secretary, Policy Management, and Budget.

Accordingly, for the reasons stated in the Preamble, and under the authorities cited below, BLM amends Title 43 of the Code of Federal Regulations part 3800 as set forth below:

PART 3800—MINING CLAIMS UNDER THE GENERAL MINING LAWS

Subpart 3809—Surface Management

1. The authority citation for subpart 3809 continues to read as follows:

Authority: 16 U.S.C. 1280; 30 U.S.C. 22; 30 U.S.C. 612; 43 U.S.C. 1201; and 43 U.S.C. 1732, 1733, 1740, 1781, and 1782.

2. Amend § 3809.2 by removing the term ''§ 3809.31(c)'' at the end of the first sentence of paragraph (a), and adding in its place the term ''§ 3809.31(d) and (e).''

3. Amend § 3809.5 by revising the definitions of ''operator'' and ''unnecessary or undue degradation'' to read as follows:

§ 3809.5 How does BLM define certain terms used in this subpart?

* * * * *

Operator means a person conducting or proposing to conduct operations.

* * * * *

Unnecessary or undue degradation means conditions, activities, or practices that:

(1) Fail to comply with one or more of the following: the performance standards in § 3809.420, the terms and conditions of an approved plan of operations, operations described in a complete notice, and other Federal and state laws related to environmental protection and protection of cultural resources;

(2) Are not ''reasonably incident'' to prospecting, mining, or processing operations as defined in § 3715. 0–5 of this chapter; or

(3) Fail to attain a stated level of protection or reclamation required by specific laws in areas such as the California Desert Conservation Area, Wild and Scenic Rivers, BLM-administered portions of the National Wilderness System, and BLM-administered National Monuments and National Conservation Areas.

4. Amend § 3809.31(e) by removing the word ''If'' and adding the phrase ''For other than Stock Raising Homestead Act lands, if'' at the beginning of the first sentence.

5. Amend § 3809.116 by revising paragraph (a) to read as follows:

§ 3809.116 As a mining claimant or operator, what are my responsibilities under this subpart for my project area?

(a) Mining claimants and operators (if other than the mining claimant) are liable for obligations under this subpart that accrue while they hold their interests.

* * * * *

6. Amend § 3809.401 (b)(5)(ii) by removing the term ''§ 3809.420(c)(4)(vii)'', and adding in its place the term ''§ 3809.420(c)(12)(vii).''

7. Amend § 3809.411 by revising paragraph (d)(3)(iii) to read:

§ 3809.411 What action will BLM take when it receives my plan of operations?

* * * * *

(d) * * *

(3) * * *

* * * * *

(iii) Proposes operations that would result in unnecessary or undue degradation of public lands.

8. Amend § 3809.415 by removing paragraph (d).

9. Revise § 3809.420 to read as follows:

§ 3809.420 What performance standards apply to my notice or plan of operations?

The following performance standards apply to your notice or plan of operations:

(a) *General performance standards.* (1) *Technology and practices.* You must use equipment, devices, and practices that will meet the performance standards of this subpart.

(2) *Sequence of operations.* You must avoid unnecessary impacts and facilitate reclamation by following a reasonable and customary mineral exploration, development, mining and reclamation sequence.

(3) *Land-use plans.* Consistent with the mining laws, your operations and post-mining land use must comply with the applicable BLM land-use plans and activity plans, and with coastal zone management plans under 16 U.S.C. 1451, as appropriate.

(4) *Mitigation.* You must take mitigation measures specified by BLM to protect public lands.

(5) *Concurrent reclamation.* You must initiate and complete reclamation at the earliest economically and technically feasible time on those portions of the disturbed area that you will not disturb further.

(6) *Compliance with other laws.* You must conduct all operations in a manner that complies with all pertinent Federal and state laws.

(b) *Specific standards.* (1) *Access routes.* Access routes shall be planned for only the minimum width needed for operations and shall follow natural contours, where practicable to minimize cut and fill. When the construction of access routes involves slopes that require cuts on the inside edge in excess of 3 feet, the operator may be required to consult with the authorized officer concerning the most appropriate location of the access route prior to commencing operations. An operator is entitled to access to his operations consistent with provisions of the mining laws. Where a notice or a plan of operations is required, it shall specify the location of access routes for operations and other conditions necessary to prevent unnecessary or undue degradation. The authorized officer may require the operator to use existing roads to minimize the number of access routes, and, if practicable, to construct access roads within a designated transportation or utility corridor. When commercial hauling is involved and the use of an existing road is required, the authorized officer may require the operator to make appropriate arrangements for use and maintenance.

(2) *Mining wastes.* All tailings, dumps, deleterious materials or substances, and other waste produced by the operations shall be disposed of so as to prevent unnecessary or undue degradation and in accordance with applicable Federal and state Laws.

(3) *Reclamation.* (i) At the earliest feasible time, the operator shall reclaim the area disturbed, except to the extent necessary to preserve evidence of mineralization, by taking reasonable measures to prevent or control on-site and off-site damage of the Federal lands.

(ii) Reclamation shall include, but shall not be limited to:

(A) Saving of topsoil for final application after reshaping of disturbed areas have been completed;

(B) Measures to control erosion, landslides, and water runoff;

(C) Measures to isolate, remove, or control toxic materials;

(D) Reshaping the area disturbed, application of the topsoil, and revegetation of disturbed areas, where reasonably practicable; and

(E) Rehabilitation of fisheries and wildlife habitat.

(iii) When reclamation of the disturbed area has been completed, except to the extent necessary to preserve evidence of mineralization, the authorized officer shall be notified so that an inspection of the area can be made.

(4) *Air quality.* All operators shall comply with applicable Federal and state air quality standards, including the Clean Air Act (42 U.S.C. 1857 *et seq.*).

(5) *Water quality.* All operators shall comply with applicable Federal and state water quality standards, including the Federal Water Pollution Control Act, as amended (30 U.S.C. 1151 *et seq.*).

(6) *Solid wastes.* All operators shall comply with applicable Federal and state standards for the disposal and treatment of solid wastes, including regulations issued pursuant to the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act (42 U.S.C. 6901 *et seq.*). All garbage, refuse or waste shall either be removed from the affected lands or disposed of or treated to minimize, so far as is practicable, its impact on the lands.

(7) *Fisheries, wildlife and plant habitat.* The operator shall take such action as may be needed to prevent adverse impacts to threatened or endangered species, and their habitat which may be affected by operations.

(8) *Cultural and paleontological resources.* (i) Operators shall not knowingly disturb, alter, injure, or destroy any scientifically important paleontological remains or any historical or archaeological site, structure, building or object on Federal lands.

(ii) Operators shall immediately bring to the attention of the authorized officer any cultural and/or paleontological resources that might be altered or destroyed on Federal lands by his/her operations, and shall leave such discovery intact until told to proceed by the authorized officer. The authorized officer shall evaluate the discoveries brought to his/her attention, take action to protect or remove the resource, and allow operations to proceed within 10 working days after notification to the authorized officer of such discovery.

(iii) The Federal Government shall have the responsibility and bear the cost of investigations and salvage of cultural and paleontology values discovered after a plan of operations has been approved, or where a plan is not involved.

(9) *Protection of survey monuments.* To the extent practicable, all operators shall protect all survey monuments, witness corners, reference monuments, bearing trees and line trees against unnecessary or undue destruction, obliteration or damage. If, in the course of operations, any monuments, corners, or accessories are destroyed, obliterated, or damaged by such operations, the operator shall immediately report the matter to the authorized officer. The authorized officer shall prescribe, in writing, the requirements for the restoration or reestablishment of monuments, corners, bearing and line trees.

(10) *Fire.* The operator shall comply with all applicable Federal and state fire laws and regulations, and shall take all reasonable measures to prevent and suppress fires in the area of operations.

(11) *Acid-forming, toxic, or other deleterious materials.* You must incorporate identification, handling, and placement of potentially acid-forming, toxic or other deleterious materials into your operations, facility design, reclamation, and environmental monitoring programs to minimize the formation and impacts of acidic, alkaline, metal-bearing, or other deleterious leachate, including the following:

(i) You must handle, place, or treat potentially acid-forming, toxic, or other

deleterious materials in a manner that minimizes the likelihood of acid formation and toxic and other deleterious leachate generation (source control);

(ii) If you cannot prevent the formation of acid, toxic, or other deleterious drainage, you must minimize uncontrolled migration of leachate; and

(iii) You must capture and treat acid drainage, or other undesirable effluent, to the applicable standard if source controls and migration controls do not prove effective. You are responsible for any costs associated with water treatment or facility maintenance after project closure. Long-term, or post-mining, effluent capture and treatment are not acceptable substitutes for source and migration control, and you may rely on them only after all reasonable source and migration control methods have been employed.

(12) *Leaching operations and impoundments.* (i) You must design, construct, and operate all leach pads, tailings impoundments, ponds, and solution-holding facilities according to standard engineering practices to achieve and maintain stability and facilitate reclamation.

(ii) You must construct a low-permeability liner or containment system that will minimize the release of leaching solutions to the environment. You must monitor to detect potential releases of contaminants from heaps, process ponds, tailings impoundments, and other structures and remediate environmental impacts if leakage occurs.

(iii) You must design, construct, and operate cyanide or other leaching facilities and impoundments to contain precipitation from the local 100-year, 24-hour storm event in addition to the maximum process solution inventory. Your design must also include allowances for snowmelt events and draindown from heaps during power outages in the design.

(iv) You must construct a secondary containment system around vats, tanks, or recovery circuits adequate to prevent the release of toxic solutions to the environment in the event of primary containment failure.

(v) You must exclude access by the public, wildlife, or livestock to solution containment and transfer structures that contain lethal levels of cyanide or other solutions.

(vi) During closure and at final reclamation, you must detoxify leaching solutions and heaps and manage tailings or other process waste to minimize impacts to the environment from contact with toxic materials or leachate. Acceptable practices to detoxify solutions and materials include natural degradation, rinsing, chemical treatment, or equally successful alternative methods. Upon completion of reclamation, all materials and discharges must meet applicable standards.

(vii) In cases of temporary or seasonal closure, you must provide adequate maintenance, monitoring, security, and financial guarantee, and BLM may require you to detoxify process solutions.

(13) *Maintenance and public safety.* During all operations, the operator shall maintain his or her structures, equipment, and other facilities in a safe and orderly manner. Hazardous sites or conditions resulting from operations shall be marked by signs, fenced, or otherwise identified to alert the public in accordance with applicable Federal and state laws and regulations.

10. Add section 3809.421 to read as follows:

§ 3809.421 Enforcement of performance standards.

Failure of the operator to prevent unnecessary or undue degradation or to complete reclamation to the standards described in this subpart may cause the operator to be subject to enforcement as described in §§ 3809.600 through 3809.605 of this subpart.

11. Revise section 3809.598 to read as follows:

§ 3809.598 What if the amount forfeited will not cover the cost of reclamation?

If the amount forfeited is insufficient to pay for the full cost of reclamation, the operators and mining claimants are liable for the remaining costs as set forth in § 3809.116. BLM may complete or authorize completion of reclamation of the area covered by the financial guarantee and may recover from responsible persons all costs of reclamation in excess of the amount forfeited.

§ 3809.604 [Amended]

12. Amend § 3809.604 revising the phrase ''§§ 3809.700 and 3809.702'' to read ''§ 3809.700'' at the end of the last sentence of paragraph (a).

§ 3809.702 [Removed]

13. Remove § 3809.702.

§ 3809.703 [Removed]

14. Remove § 3809.703.

[FR Doc. 01–27074 Filed 10–29–01; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3800

[WO–300–1990–PB–24 1A]

RIN 1004–AD44

Mining Claims Under the General Mining Laws; Surface Management

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Land Management (BLM or ''we'') proposes to amend its regulations governing mining operations involving metallic and some other minerals on public lands. The purpose of the proposed rule is to obtain further public comment on changes to these regulations that BLM is adopting in a final rule that appears elsewhere in today's **Federal Register**. We are also seeking comment on other changes in the hardrock mining surface management regulations that were not directly addressed in today's final rule.

DATES: You should submit your comments by December 31, 2001. BLM will not necessarily consider comments postmarked or received by messenger or electronic mail after the above date in the decisionmaking process on the proposed rule.

ADDRESSES: Mail: Director (630), Bureau of Land Management, Administrative Record, Room 401 LS, 1849 C Street, NW, Washington, DC 20240.

Personal or messenger delivery: Room 401, 1620 L Street, NW, Washington, DC 20036.

Internet e-mail: *WOComment@blm.gov.* (Include ''Attn: AD44'')

FOR FURTHER INFORMATION CONTACT: Robert M. Anderson, 202/208–4201; or Michael Schwartz, 202/452–5198. Individuals who use a telecommunications device for the deaf (TDD) may contact us through the Federal Information Relay Service at 1–800/877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Background
III. Discussion of Proposed Rule
IV. Procedural Matters

I. Public Comment Procedures

A. How Do I Comment on the Proposed Rule?

If you wish to comment, you may submit your comments by any one of several methods.

- You may mail comments to Director (630), Bureau of Land Management, Administrative Record, Room 401 LS, 1849 C Street, NW, Washington, DC 20240.
- You may deliver comments to Room 401, 1620 L Street, NW, Washington, DC 20036.
- You may also comment via the Internet to *WOComment@blm.gov.* Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include ''Attn: AD44'' and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact us directly at 202/452–5030.

Please make your comments on the proposed rule as specific as possible, confine them to issues pertinent to the proposed rule, and explain the reason for any changes you recommend. Where possible, your comments should reference the specific section or paragraph of the proposal that you are addressing.

BLM may not necessarily consider or include in the Administrative Record for the final rule comments that BLM receives after the close of the comment period (*see* **DATES**) or comments delivered to an address other than those listed above (*see* **ADDRESSES**).

B. May I Review Comments Submitted by Others?

Comments, including names and street addresses of respondents, will be available for public review at the address listed under ''**ADDRESSES:** Personal or messenger delivery'' during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday, except holidays.

Individual respondents may request confidentiality, which we will honor to the extent allowable by law. If you wish to withhold your name or address, except for the city or town, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

II. Background

On November 21, 2000 (65 FR 69998), BLM adopted a final rule revising the hardrock mining surface management regulations in 43 CFR subpart 3809 (hereinafter referred to as the ''2000 rule''). These regulations became effective on January 20, 2001. On March 23, 2001 (66 FR 16162), BLM proposed to make changes to the 2000 rule because of substantial concerns raised by the mining industry, the western states and environmental groups. The preamble to that proposed rule explains in detail the nature of the concerns. The regulatory text in this proposed rule, with exceptions we will discuss later in this preamble, is identical to that in a final rule published elsewhere in today's **Federal Register**. You should refer to that document for a complete discussion of the background of the final rule.

While we are providing this additional opportunity for interested parties to comment on changes to the hardrock mining regulations, we decided that it was important to make final some changes today in order to resolve uncertainties resulting from pending legal challenges. This will ensure a continued reliable supply of minerals. This benefits all affected parties by clarifying the Department's position on several issues involved in the litigation challenging the 2000 rules. However, we recognize that because of the high level of interest in this rule among affected industry groups, environmental organizations, and states, we might benefit from providing a further opportunity to comment on the specific changes we are adopting today. If comments on this proposed rule indicate that additional changes to the regulations are warranted, we will make these changes in a subsequent final rule.

In addition to the specific issues addressed in the proposed rule language, we are particularly interested in comments on the following topics:

- Whether we should amend the regulations regarding BLM's relationship to states and the delegations these rules provide.
- Whether additional innovative means are available to provide sound and reliable financial guarantees.
- Whether BLM should always perform a validity examination before approving a plan of operations on withdrawn lands.
- Whether we should add a specific reference to cave resources in the performance standards.
- Whether the 3809 regulations published today contain other provisions which are either overly burdensome or fail to provide adequate environmental protection.

We may address these issues and others in a future proposed rule.

III. The Proposed Rule

This proposed rule gives you an additional opportunity to comment on the provisions contained in the final rule published elsewhere in today's

Federal Register. See that document for a more complete discussion of the changes to the 2000 rule and our rationale for not making additional changes. Because the rule we are proposing today also was the subject of the March 23, 2001, proposed rule, you do not need to resubmit comments that you sent in response to that proposal. We will include all comments submitted in response to the March 23, 2001, proposed rule in the administrative record for today's proposed rule.

In addition to the same language that is also contained in the final rule published today, this proposed rule includes several technical or clerical changes and other modifications. One is the provision for including drywashers under 10 horsepower in casual use as defined in section 3809.5. Following is a section-by-section summary of the provisions that have changed from the 2000 rule. Today's final rule contains additional discussion of those provisions.

Section 3809.5 How Does BLM Define Certain Terms Used In this Subpart?

We are proposing changes in the definition of ''casual use,'' ''operator,'' and ''unnecessary or undue degradation'' found at section 3809.5.

Casual Use

Several comments on the March 23, 2001, proposed rule from persons who engage in small scale placer mining objected to the definition of ''casual use'' in the 2000 rule allowing employment of only hand or battery-powered dry washers as casual use. Many recreational miners use dry washers powered by small gasoline motors that are roughly equivalent to lawn mower motors. The comments said that this definition would bar these miners from using public lands for their activities due to the cost of either having to file a plan of operations or acquiring battery-powered drywashers. In this rule we propose to amend the definition of ''casual use'' to accommodate this use of small motorized drywashers (under 10 horsepower) that cause negligible disturbance. To ensure that such disturbances are negligible, we propose a 10-horsepower engine limit. The use of drywashers powered by motors of less than 10 horsepower would be considered casual use. The use of any drywasher powered by an engine with 10 or more horsepower would not be casual use. This change was not included in today's final rule.

Today's final rule contains the same language as the 2000 rule, which in turn was consistent with the 1980 regulations, which stated that casual use does not include the use of ''mechanized earth-moving equipment.'' However, the purpose of this change is to reflect BLM's agreement with comments that said that the disturbance created by these small drywashers, largely used by individual recreational miners, is negligible in most areas, and thus should qualify as casual use. This type of dry washing activity would be unfairly burdened under the 2000 rule, under which all activities that are not classified as casual use must file a plan of operations and a bond. Since these portions of the 2000 rule have been retained, this change to the casual use definition corresponds to a similar 2000 rule treatment of some small suction dredgers, and is not significantly different in its impacts from those corresponding provisions analyzed in the Environmental Impact Statement alternative that would have retained the 1980 regulations.

Operator

We propose to define the term ''operator'' to mean any person who is conducting or proposing to conduct operations. This definition, which appeared in the regulations that were in effect before January 20, 2001 (the 1980 regulations), is familiar to regulators and the regulated community alike, and did not cause problems. It does not contain the 2000 rule provisions that expressly include mining claimants, persons who manage or direct operations and corporate parents and affiliates who materially participate in the operations. This proposed definition of ''operator'' is the same as the one in today's final rule.

BLM is concerned that the 2000 rule definition of the term ''operator,'' by referencing ''parent'' entities and affiliates, appeared to authorize BLM routinely to breach the corporate veil that generally is established under state corporate laws to protect such entities. As explained in the **Federal Register** preamble to the 2000 rule (65 FR 70013), BLM adopted the ''material participation'' standard in the 2000 rules based on a concept authorized under CERCLA, as enunciated in a recent Supreme Court decision. However, there is no indication that Congress intended to override state laws in this regard under FLPMA. Unlike statutes such as the Surface Mining Control and Reclamation Act (*see*, e.g., 30 U.S.C. 1260(c)) that expressly focus on ''ownership'' and ''control'' of entities, neither the mining laws nor FLPMA expressly holds parent entities and affiliates responsible for activities which occur at mining operations conducted by other entities. Thus, we decided we will not include the concept of ''parent'' or ''affiliate'' responsibility in the definition of the term ''operator'' in subpart 3809. Under today's final rule and these proposed rules, we will hold the appropriate entity liable through established state common law principles.

The 2000 rule also included the statement that the operator can also be the claimant. That provision also is unnecessary and therefore is removed by today's final rule, and does not appear in this proposed rule. Both mining claimants and operators, however, are still responsible for any liability arising from obligations relating to the project area that accrue while they hold their interests, as stated in section 3809.116. The claimant may operate his or her mining claim, but stating that in the definition is unnecessary.

The change in this proposed rule, and in today's final rule, removes the presumption that any person who was ever associated with the site will be 100 percent liable, and allows for a case-by-case factual determination of an appropriate level of responsibility. After reviewing comments received, and re-evaluating our policy direction, we have decided that the public interest is better served by this more equitable approach to establishing liability. It will ensure fairness to all parties while allowing enforcement against responsible parties.

The definition of operator in this proposed rule is the same as the one in today's final rule, and we request comment on whether we should reinstate the definition in the 2000 rule or incorporate some other definition.

Unnecessary or Undue Degradation

We propose a definition of the term ''unnecessary or undue degradation'' that excludes paragraph (4) of the 2000 rule definition. That paragraph included in the definition conditions, activities, or practices that occur on mining claims or millsites located after October 21, 1976 (or on unclaimed lands), and result in substantial irreparable harm (SIH) to significant scientific, cultural, or environmental resource values of the public lands that cannot be mitigated (the ''SIH'' standard). This paragraph created significant uncertainty by giving BLM broad authority to deny plans of operation even if all of the other standards could be satisfied. Of all the provisions in the 2000 rule, this one paragraph had more projected economic impacts than all of the other sections combined. Further analysis of this issue is set forth in the preamble to today's final rule. In addition, the Interior

Department Solicitor has issued an opinion (M–37007) addressing the legal authority of the SIH standard. This opinion has been placed in the Administration Record.

The definition of ''unnecessary or undue degradation'' in this proposed rule is the same as the one in today's final rule, and we request comment on whether we should continue to exclude paragraph (4) from the definition.

Section 3809.31 Are There any Special Situations That Affect What Submittals I Must Make Before I Conduct Operations?

Today's final rule adds the phrase ''For other than Stock Raising Homestead Act lands'' to the beginning of paragraph (e) to make it clear that paragraph (c) does not apply to Stock Raising Homestead Act lands, which we address in paragraph (d). We made the change because it was possible to construe paragraph (e) in such a way that it could be read to include Stock Raising Homestead Act lands. This was not our intent in the 2000 rule, as demonstrated by the presence of paragraph (d), which applies only to Stock Raising Homestead Act lands. You may comment on whether we should retain this change.

We also propose to change the word ''submittals'' in the heading of this section to ''submissions.'' We are proposing this simply for grammatical reasons. This minor diction change in section 3809.31 was not included in today's final rule.

Section 3809.116 As a Mining Claimant or Operator What Are My Responsibilities Under This Subpart for My Project Area?

Today's final rule and this proposed rule delete the specific reference to joint and several liability that was added in the 2000 rule. Both mining claimants and operators are liable for compliance with the requirements of this rule. BLM will determine the appropriate degree of responsibility on a case-specific basis, guided by common law principles. The underlying liability scheme serves as a backstop, and allows for a case-by-case factual determination of an appropriate level of responsibility. After reviewing comments received and reevaluating our policy direction, we have decided that the public interest is better served by this more equitable approach to establishing liability, which will ensure fairness to all parties while encouraging enforcement against responsible parties.

We request comment on whether we should eliminate the reference included in section 3809.116(a) of the 2000 rule to ''joint and several'' liability. The 2000 rule provided a series of examples. These examples are also removed in this proposed rule and in today's final rule. Section 3809.116(a) thus would provide that ''mining claimants and operators'' (if other than the mining claimant) ''are liable for obligations under this subpart that accrue while they hold their interests.'' BLM recognizes that neither FLPMA (43 U.S.C. 1701 *et seq.*) nor the mining laws expressly provide for joint and several liability, and such an approach has not been shown to be necessary to prevent unnecessary or undue degradation of the public lands. There is sufficient authority under current law and today's final rule to fully enforce the requirements of subpart 3809 against both claimants and operators. Furthermore, the establishment of adequate financial guarantees ensures that neither the government nor taxpayer will be saddled with the costs of reclamation in the event of incomplete performance of reclamation responsibilities.

We note that subpart 3809 only covers liability for reclamation of mining operations under FLPMA and the mining laws. Unlike the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601 *et seq.*, these statutes do not establish joint and several liability. To the extent obligations associated with mining operations arise under CERCLA or any other statute, such obligations are independent of those that subpart 3809 establishes. Subpart 3809 is not intended to affect any obligations established under other statutes, and liability schemes under such other statutes do not determine the entities responsible under subpart 3809. BLM will determine the appropriate degree of liability on a case-specific basis, guided by common-law principles.

Section 3809.401 Where Do I File My Plan of Operations and What Information Must I Include With It?

In today's final rule, we amend section 3809.401 only to change a cross-reference to a renumbered performance standard. You may comment on this change.

Section 3809.411 What Action Will BLM Take When It Receives My Plan of Operations?

and

Section 3809.415 How Do I Prevent Unnecessary or Undue Degradation While Conducting Operations on Public Lands?

In today's final rule, we amend sections 3809.411 and 3809.415 by removing a portion of paragraph 3809.411(d)(3)(iii) and all of paragraph 3809.415(d) of the 2000 rule, both of which would have implemented the substantial irreparable harm standard. These are corresponding changes resulting from the removal of the SIH standard from the definition of unnecessary or undue degradation. You may comment on whether we should retain these amendments.

Section 3809.420 What Performance Standards Apply to My Notice or Plan of Operations?

The performance standards of subpart 3809 are key to establishing the adequacy of environmental protection that the regulations require. In deciding which performance standards to include in the final rule, we carefully considered a congressionally-mandated report by the National Research Council (NRC), entitled *Hardrock Mining on Federal Lands* (the NRC Report). The general conclusion of the NRC Report is that the existing regulations are generally effective, although some changes are necessary. (NRC Report, p. 5.) The NRC Report further states that the ''overall structure of the federal and state laws and regulations that provide mining-related environmental protection is complicated but generally effective.'' This conclusion and the material in the NRC Report led BLM to conclude that it was unnecessary to adopt an entire new set of performance standards in the 2000 rule, and that we should reinstate the performance standards from the 1980 regulations. Thus, today's final rule reinstates the standards that were formerly set forth in sections 3809.1–3(d), 3809.2–2, and 3809.3–3 through 3809.3–5 of the regulations in effect prior to January 20, 2001. These are to be incorporated into section 3809.420, as paragraph (a)(6) and paragraphs (b)(1) through (b)(10) and (b)(13). You may comment on whether we should retain these performance standards as they are set forth in this proposed rule and today's final rule.

In addition to reinstating the previous performance standards in today's final rule, we retain the general performance standards (paragraphs (a)(1) through (a)(5)) from the 2000 rule because they provide an overview of how an operator should conduct operations under an approved plan of operations and clarify certain basic responsibilities, including the operator's responsibility to comply with applicable land use plans and BLM's responsibility to specify necessary mitigation measures. We also included a paragraph (a)(6) in the general standards to make clear that

operators must comply with pertinent state and Federal laws and regulations. This paragraph is derived from the introductory text of former section 3809.2–2. These standards, while general in nature, provide ample guidance on how to conduct operations. In addition, in today's final rule we retain from the 2000 rule the performance standards which address acid-forming, toxic, and deleterious materials and the standards governing leaching operations and impoundments. These latter standards reflect and codify BLM's acid rock and cyanide policies, which have been in effect since before the 2000 rule was published. They have been redesignated as sections 3809.420(c)(11) and (c)(12). BLM would appreciate comment on the combination of performance standards from the 1980 regulations and the 2000 rule that is included in today's final rule.

BLM expects that implementation of the performance standards will be straightforward because today's final rule and this proposed rule do not introduce new performance standards. We recognize that some confusion could exist as to which performance standards apply to particular operations. The following table clarifies which set of performance standards you should follow:

If	Then
BLM approved your plan of operations prior to the effective date of today's final rule.	Continue to operate under your approved plan.
Your plan of operations was pending prior to January 20, 2001.	If approved, you must conduct your plan of operations under the performance standards in place before January 20, 2001.
You filed an application on or after January 20, 2001 and BLM has not acted on it as of the effective date of today's final rule.	If approved, you must conduct your plan of operations under the performance standards in place as of the effective date of today's final rule.

We should also note we did not change the plan content requirements in section 3809.401.

Section 3809.421 Enforcement of Performance Standards

Related to restoring provisions from the 1980 regulations containing performance standards, we also would add section 3809.421, which contains language on enforcing the performance standards. This section is taken from section 3809.1–3(f) of the regulations in effect prior to January 20, 2001. The new section is helpful to remind operators that failure to comply with the performance standards subjects them to enforcement under this subpart. This amendment is included in today's final rule, but you may comment on whether we should retain it. We included this provision in today's final rule and this proposed rule as a separate section because it does not fit into the structure of revised section 3809.420.

Section 3809.598 What If the Amount Forfeited Will Not Cover the Cost of Reclamation?

In today's final rule we remove a reference in section 3809.598 to joint and several liability to conform to changes in section 3809.116. Under the amended provision, we will determine on a case-by-case basis the apportionment of liability between operators and mining claimants to cover the full cost of reclamation. You may comment on whether we should retain this amendment.

Section 3809.604 What Happens If I Do Not Comply With a BLM Order?

In today's final rule we remove a reference in paragraph (a) of this section to civil penalties in section 3809.702 of the 2000 rule, because this proposed rule would remove that section, as discussed below. You may comment on whether we should retain this change.

Section 3809.702 What Civil Penalties Apply to Violations of This Subpart?

and

Section 3809.703 Can BLM Settle a Proposed Civil Penalty?

In today's final rule we remove sections 3809.702 and 3809.703 of the 2000 rule. We made this change because there is merit to the point made by comments that stated that FLPMA does not contain a section expressly addressing administrative civil penalties. Although in the November 2000 **Federal Register** preamble we made an argument in support of the agency's authority to assess administrative penalties, this is an unsettled area for which it is prudent to await clear guidance from Congress before promulgating rules. You may comment on whether we should retain this amendment of the 2000 rule.

Finally, as a technical matter, under **Federal Register** rules, we cannot publish in this proposed rule the regulatory amendments for some of the changes we made in the final rule published elsewhere in today's **Federal Register** and referred to in this preamble. Nevertheless, you may comment on these changes. These include the removal of paragraph (d) from § 3809.415, a change made to conform to the proposed revision of the definition of ''unnecessary or undue degradation,'' and the removal of §§ 3809.702 and 3809.703 on civil penalties. In addition, you may comment on the cross-reference changes and corrections made in the final rule in §§ 3809.2, 3809.31, and 3809.604.

III. How Did BLM Fulfill Its Procedural Obligations?

Executive Order 12866, Regulatory Planning and Review

BLM found in the 2000 rule that the new subpart 3809 regulations were a significant regulatory action under section 3(f) of Executive Order 12866 and require an assessment of potential costs and benefits under section 6(a)(3) of that Executive Order. The impacts caused by today's final action and proposed action remain within the range of alternatives analyzed for the 2000 rule. Since we propose to retain most of the 2000 rule, while amending selected provisions, we rely on the regulatory impact analysis and benefit-cost analysis prepared for the 2000 rule and summarized in that rule, to evaluate today's final rule and this proposed rule. The full analyses remain on file in the BLM Administrative Record at the address specified in the **ADDRESSES** section. In the following paragraphs, we describe how the changes presented in today's rule affect these analyses.

The estimated costs associated with this rule are significantly lower than those associated with the 2000 rule. Over the 10 year period that we analyzed, we do not expect today's rule to have significant annual impacts on the economy.

The lower expected costs arise primarily from removing the SIH provision of the 2000 rule. Relative to the 2000 rule, substantial production benefits could accrue as a result of eliminating the SIH standard. However, uncertainty exists with respect to how eliminating the SIH provision will affect net economic benefits. Uncertainty about how the SIH provision would have been implemented, site specific factors, and any exploration and production effects (and the timing of these effects) make evaluating net economic benefits very difficult.

The net economic effects associated with eliminating joint and several liability, civil penalties, and revising the performance standards (with the exception of the acid rock drainage and cyanide standards, which would be retained) are equally difficult to

quantify but are not significant because the economic costs associated with these provisions are likely to be overshadowed by the potential economic costs associated with the SIH provision. We estimated the net effect of modifying the performance standards from the 1980 rule to the 2000 rule as being limited. Similarly, changing the 2000 standards back to the 1980 standards will result in negligible impact.

Clarity of the Regulations

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following:

(1) Are the requirements in the proposed regulations clearly stated?

(2) Do the regulations contain technical language or jargon that interferes with their clarity?

(3) Does the format of the regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?

(4) Would the regulations be easier to understand if they were divided into more (but shorter) sections? (A ''section'' appears in bold type and is preceded by the symbol ''§ '' and a numbered heading, for example ''§ 3809.420 What performance standards apply to my notice or plan of operations?'')

(5) Is the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the regulations? How could this description be more helpful in making the final regulations easier to understand?

Please send any comments you have on the clarity of the proposed regulations to the address specified in the **ADDRESSES** section.

National Environmental Policy Act

The 2000 rule found that the new subpart 3809 regulations constituted a major Federal action significantly affecting the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C). BLM prepared an environmental impact statement (EIS), which remains on file and is available to the public in the BLM Administrative Record at the address specified in the **ADDRESSES** section.

Because today's final rule and this proposed rule retain most of the provisions of the 2000 rule, we rely on the findings in the EIS. In today's final rule, we discuss in considerable detail the extent to which we expect this rule to change the impacts on the human environment that we anticipated in the 2000 rule. The final rule also contains a discussion of comments we received on the March 23, 2001, proposal. We have found that the impacts resulting from the final rule, with respect to the baseline established by the 1980 standards as well as the change from the 2000 rule, would fall within the range of impacts analyzed, and thus are not significantly different. No significant new information or change in circumstances has occurred that would alter the analysis or findings in the final EIS.

The definition of casual use in this proposed rule, which would specify that a gas powered drywasher of less than 10 horsepower qualifies as casual use, would not change impacts appreciably.

Although today's final rule and this proposed rule remove the substantial irreparable harm provision in the definition of unnecessary or undue degradation, BLM retains ample authority to protect surface resources and the environment. As discussed in today's final rule, BLM has ample statutory and regulatory means of preventing harm to significant scientific, cultural, or environmental resource values: the Endangered Species Act, the Archaeological Resources Protection Act, establishment of areas of critical environmental concern in land use plans under the FLPMA, withdrawal under Section 204 of FLPMA, the performance standards in section 3809.420, and so forth. Many of these are invoked in the performance standards in section 3809.420 and in the requirements for submission of Plans of Operations in section 3809.401.

The revision of section 3809.420 removes requirements for environmental protection that might conflict with or duplicate existing Federal or State laws or regulations. For example, paragraph (b)(2), which provided for minimizing water pollution via source control rather than treatment, and (b)(3), on jurisdictional wetlands protection, are addressed by the Clean Water Act, and the relevant programs are administered by the Environmental Protection Agency or the state or both, and the Corps of Engineers, respectively. Therefore, the requirements that the operator must comply with the Clean Water Act, Clean Air Act, and other environmental laws and regulations will have the same effect. The final rule and this proposed rule remove unnecessary language.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980 (RFA), as amended, 5 U.S.C. 601–612, RFA to ensure that Federal Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. BLM prepared a regulatory flexibility analysis on the expected impact of the 2000 rule on small entities, determined that the 2000 rule will have a significant economic effect on a substantial number of small entities, and summarized it in the 2000 rule (65 FR 69998, 70103). The regulatory flexibility analysis remains on file in the BLM Administrative Record at the address specified in the **ADDRESSES** section. In today's final rule and this proposed rule we have made changes that should reduce the burdens on small entities. The regulations no longer provide for joint and several liability for violations of the regulations, no longer provide for civil liability for violations, simplify the definition of ''operator,'' and reduce the burdens of performance standards.

The Small Business Administration (SBA) commented in support of the March 23, 2001, proposed rule to suspend the 2000 rule. The principal substantive objection of the SBA to the 2000 rule was to the definition of ''unnecessary or undue degradation'' and the inclusion in it of ''substantial irreparable harm'' as an element. Removing this element from the definition in this proposed rule should obviate this objection.

Small Business Regulatory Enforcement Fairness Act

Evaluated against the baseline of the 2000 rule, BLM has concluded that today's final rule and this proposed rule will not have a significant economic impact on a substantial number of small entities. This rule should reduce the costs borne by small entities relative to the 2000 rule. However, the magnitude of the cost reductions depends on site and operation specific factors. The removal of the SIH provision will benefit small entities. As stated earlier, the SBA objected to the 2000 rules primarily because of the SIH provision. This proposed rule obviates that objection and benefits small entities.

Unfunded Mandates Reform Act

In the 2000 final rule (65 FR 69998, 70109), BLM found that those final regulations do not impose an unfunded

mandate on state, local, or tribal governments or the private sector of more than $100 million per year; nor do those final regulations have a significant or unique effect on State, local, or tribal governments or the private sector. The impacts of this proposed rule do not change that finding. Therefore, BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*)

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

In the 2000 final rule (65 FR 69998, 70109), BLM found that those final regulations do not represent a government action capable of interfering with constitutionally protected property rights. We stated that it doesn't affect property rights or interests in property, such as mining claims; it governs how an individual or corporation exercises those rights. However, one comment on the March 23, 2001, proposal to amend the 2000 rule stated that the joint and several liability provision in section 3809.116(a) would diminish the property value by severely restraining alienation and thus amount to a taking in violation of the Fifth Amendment of the Constitution. We have removed this provision in today's final rule and would maintain that change in this proposed rule. Because today's final rule and this proposed rule do not make any changes that increase the burdens on mining claim owners or other property owners, the Department of the Interior has determined that this proposed rule would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism

In the 2000 rule, BLM found (65 FR 69998, 70109) that it would have federalism implications in that in certain circumstances it may preempt State law. However, we concluded that it would not have a substantial direct effect on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. The 2000 rule describes the consultation BLM engaged in with the States and the results of that consultation. The changes made in this proposed rule will not increase burdens on States, and will facilitate cooperation between States and the United States in the area of surface management of mining operations on public lands.

The 2000 rule described the consultation between BLM and the States in aid of developing that rule. This proposed rule does not change the findings in that rule. This rule does not change the regulations in a manner contrary to the interests of the States as found from consultation with the States.

Further, we received comments from governors, agencies, or legislatures of or Members of Congress from the following Western States, as well as the Western Governors' Association: Alaska, Idaho, Nevada, Utah, and Wyoming. These comments were critical of the 2000 regulations and supported their suspension and revision. Only one of these provided detailed recommendations that largely tracked those of the NRC. To the extent that those specific recommendations pertain to BLM, or are within the legal responsibility of BLM, we believe this proposed rule follows those recommendations. We are also willing to engage in further consultation with states as may be appropriate.

BLM's full Federalism assessment, performed on the 2000 rule, remains on file in the BLM Administrative Record at the address specified in the **ADDRESSES** section, along with the written public comments on the assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the Office of the Solicitor has determined that this proposed rule would not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

We rely in part on Tribal consultation that occurred before publication of the 2000 rule. In accordance with Executive Order 13175, we have also found that this proposed rule does not include policies that have significant tribal implications. We have made clear that plans of operations under these regulations must comply with State, local, Tribal, and other Federal requirements. Removing the SIH standard will not significantly affect Native American cultural resources on the public lands because these resources can be protected under other provisions. In addition, in most instances mitigation measures will be possible to reduce such impacts. Today's final rule responds to comments received from Tribes on the March 23, 2001, proposal. We are willing to engage in further consultation with Tribes as may be appropriate.

E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This rule is not a significant energy action. It will not have an adverse effect on energy supplies. The principal changes proposed in the rule address (1) the definition of an operator, what entities are responsible for reclamation and other duties, (2) the definition of unnecessary or undue degradation, and (3) performance standards that operators must follow. To the extent that the rule affects the mining of energy minerals (i.e., uranium and other fissionable metals), they will tend to increase production marginally.

Paperwork Reduction Act

The 2000 final rule (65 FR 69998, 70111) stated that it required collection of information from 10 or more persons. It went on to discuss our compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), and the public comments that discussed the information collection requirements. We continue to rely on the discussion in the 2000 rule as to information collection requirement matters. The Office of Management and Budget has approved those information collection requirements in the final rule under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*, and has assigned clearance number 1004–0194. This proposed rule does not contain additional information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995.

Author

The principal authors of this rule are members of the Departmental 3809 Task Force, chaired by Robert M. Anderson, Deputy Assistant Director, Minerals, Realty, and Resource Protection, Bureau of Land Management.

List of Subjects in 43 CFR Part 3800

Administrative practice and procedure, Environmental protection, Intergovernmental relations, Land Management Bureau, Mines, Public lands-mineral resources, Reporting and record keeping requirements, Surety bonds, Wilderness areas.

P. Lynn Scarlett,

Assistant Secretary, Policy, Management, and Budget.

Accordingly, for the reasons stated in the Preamble, and under the authorities cited below, BLM proposes to amend

Title 43 of the Code of Federal Regulations, part 3800 as set forth below:

PART 3800—MINING CLAIMS UNDER THE GENERAL MINING LAWS

Subpart 3809—Surface Management

1. The authority citation for subpart 3809 continues to read as follows:

Authority: 16 U.S.C. 1280; 30 U.S.C. 22; 30 U.S.C. 612; 43 U.S.C. 1201; and 43 U.S.C. 1732, 1733, 1740, 1781, and 1782.

2. Amend § 3809.5 by removing from paragraph (1) of the definition of ''casual use'' the phrase ''hand and battery-powered drywashers'' and adding in its place the phrase ''less than 10 horsepower drywashers,'' and by revising the definitions of ''operator'' and ''unnecessary or undue degradation'' to read as follows:

§ 3809.5 How does BLM define certain terms used in this subpart?

* * * * *

Operator means a person conducting or proposing to conduct operations.

* * * * *

Unnecessary or undue degradation means conditions, activities, or practices that:

(1) Fail to comply with one or more of the following: the performance standards in § 3809.420, the terms and conditions of an approved plan of operations, operations described in a complete notice, and other Federal and state laws related to environmental protection and protection of cultural resources;

(2) Are not ''reasonably incident'' to prospecting, mining, or processing operations as defined in § 3715. 0–5 of this chapter; or

(3) Fail to attain a stated level of protection or reclamation required by specific laws in areas such as the California Desert Conservation Area, Wild and Scenic Rivers, BLM-administered portions of the National Wilderness System, and BLM-administered National Monuments and National Conservation Areas.

3. Amend § 3809.31 by removing the word ''submittals'' in the section title and adding the word ''submissions''.

4. Amend § 3809.116 by revising paragraph (a) to read as follows:

§ 3809.116 As a mining claimant or operator, what are my responsibilities under this subpart for my project area?

(a) Mining claimants and operators (if other than the mining claimant) are liable for obligations under this subpart that accrue while they hold their interests.

* * * * *

5. Amend § 3809.411 by revising paragraph (d)(3)(iii) to read:

§ 3809.411 What action will BLM take when it receives my plan of operations?

* * * * *

(d) * * *

(3) * * *

* * * * *

(iii) Proposes operations that would result in unnecessary or undue degradation of public lands.

6. Revise § 3809.420 to read as follows:

§ 3809.420 What performance standards apply to my notice or plan of operations?

The following performance standards apply to your notice or plan of operations:

(a) *General performance standards.* (1) *Technology and practices.* You must use equipment, devices, and practices that will meet the performance standards of this subpart.

(2) *Sequence of operations.* You must avoid unnecessary impacts and facilitate reclamation by following a reasonable and customary mineral exploration, development, mining and reclamation sequence.

(3) *Land-use plans.* Consistent with the mining laws, your operations and post-mining land use must comply with the applicable BLM land-use plans and activity plans, and with coastal zone management plans under 16 U.S.C. 1451, as appropriate.

(4) *Mitigation.* You must take mitigation measures specified by BLM to protect public lands.

(5) *Concurrent reclamation.* You must initiate and complete reclamation at the earliest economically and technically feasible time on those portions of the disturbed area that you will not disturb further.

(6) *Compliance with other laws.* You must conduct all operations in a manner that complies with all pertinent Federal and state laws.

(b) *Specific standards.*

(1) *Access routes.* Access routes shall be planned for only the minimum width needed for operations and shall follow natural contours, where practicable to minimize cut and fill. When the construction of access routes involves slopes that require cuts on the inside edge in excess of 3 feet, the operator may be required to consult with the authorized officer concerning the most appropriate location of the access route prior to commencing operations. An operator is entitled to access to his operations consistent with provisions of the mining laws. Where a notice or a plan of operations is required, it shall specify the location of access routes for operations and other conditions necessary to prevent unnecessary or undue degradation. The authorized officer may require the operator to use existing roads to minimize the number of access routes, and, if practicable, to construct access roads within a designated transportation or utility corridor. When commercial hauling is involved and the use of an existing road is required, the authorized officer may require the operator to make appropriate arrangements for use and maintenance.

(2) *Mining wastes.* All tailings, dumps, deleterious materials or substances, and other waste produced by the operations shall be disposed of so as to prevent unnecessary or undue degradation and in accordance with applicable Federal and state Laws.

(3) *Reclamation.* (i) At the earliest feasible time, the operator shall reclaim the area disturbed, except to the extent necessary to preserve evidence of mineralization, by taking reasonable measures to prevent or control on-site and off-site damage of the Federal lands.

(ii) Reclamation shall include, but shall not be limited to:

(A) Saving of topsoil for final application after reshaping of disturbed areas have been completed;

(B) Measures to control erosion, landslides, and water runoff;

(C) Measures to isolate, remove, or control toxic materials;

(D) Reshaping the area disturbed, application of the topsoil, and revegetation of disturbed areas, where reasonably practicable; and

(E) Rehabilitation of fisheries and wildlife habitat.

(iii) When reclamation of the disturbed area has been completed, except to the extent necessary to preserve evidence of mineralization, the authorized officer shall be notified so that an inspection of the area can be made.

(4) *Air quality.* All operators shall comply with applicable Federal and state air quality standards, including the Clean Air Act (42 U.S.C. 1857 *et seq.*).

(5) *Water quality.* All operators shall comply with applicable Federal and state water quality standards, including the Federal Water Pollution Control Act, as amended (30 U.S.C. 1151 *et seq.*).

(6) *Solid wastes.* All operators shall comply with applicable Federal and state standards for the disposal and treatment of solid wastes, including regulations issued pursuant to the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act (42 U.S.C. 6901 *et seq.*). All garbage, refuse or waste shall either be removed from the affected lands or disposed of or

treated to minimize, so far as is practicable, its impact on the lands.

(7) *Fisheries, wildlife and plant habitat.* The operator shall take such action as may be needed to prevent adverse impacts to threatened or endangered species, and their habitat which may be affected by operations.

(8) *Cultural and paleontological resources.* (i) Operators shall not knowingly disturb, alter, injure, or destroy any scientifically important paleontological remains or any historical or archaeological site, structure, building or object on Federal lands.

(ii) Operators shall immediately bring to the attention of the authorized officer any cultural and/or paleontological resources that might be altered or destroyed on Federal lands by his/her operations, and shall leave such discovery intact until told to proceed by the authorized officer. The authorized officer shall evaluate the discoveries brought to his/her attention, take action to protect or remove the resource, and allow operations to proceed within 10 working days after notification to the authorized officer of such discovery.

(iii) The Federal Government shall have the responsibility and bear the cost of investigations and salvage of cultural and paleontology values discovered after a plan of operations has been approved, or where a plan is not involved.

(9) *Protection of survey monuments.* To the extent practicable, all operators shall protect all survey monuments, witness corners, reference monuments, bearing trees and line trees against unnecessary or undue destruction, obliteration or damage. If, in the course of operations, any monuments, corners, or accessories are destroyed, obliterated, or damaged by such operations, the operator shall immediately report the matter to the authorized officer. The authorized officer shall prescribe, in writing, the requirements for the restoration or reestablishment of monuments, corners, bearing and line trees.

(10) *Fire.* The operator shall comply with all applicable Federal and state fire laws and regulations, and shall take all reasonable measures to prevent and suppress fires in the area of operations.

(11) *Acid-forming, toxic, or other deleterious materials.* You must incorporate identification, handling, and placement of potentially acid-forming, toxic or other deleterious materials into your operations, facility design, reclamation, and environmental monitoring programs to minimize the formation and impacts of acidic, alkaline, metal-bearing, or other deleterious leachate, including the following:

(i) You must handle, place, or treat potentially acid-forming, toxic, or other deleterious materials in a manner that minimizes the likelihood of acid formation and toxic and other deleterious leachate generation (source control);

(ii) If you cannot prevent the formation of acid, toxic, or other deleterious drainage, you must minimize uncontrolled migration of leachate; and

(iii) You must capture and treat acid drainage, or other undesirable effluent, to the applicable standard if source controls and migration controls do not prove effective. You are responsible for any costs associated with water treatment or facility maintenance after project closure. Long-term, or post-mining, effluent capture and treatment are not acceptable substitutes for source and migration control, and you may rely on them only after all reasonable source and migration control methods have been employed.

(12) *Leaching operations and impoundments.* (i) You must design, construct, and operate all leach pads, tailings impoundments, ponds, and solution-holding facilities according to standard engineering practices to achieve and maintain stability and facilitate reclamation.

(ii) You must construct a low-permeability liner or containment system that will minimize the release of leaching solutions to the environment. You must monitor to detect potential releases of contaminants from heaps, process ponds, tailings impoundments, and other structures and remediate environmental impacts if leakage occurs.

(iii) You must design, construct, and operate cyanide or other leaching facilities and impoundments to contain precipitation from the local 100-year, 24-hour storm event in addition to the maximum process solution inventory. Your design must also include allowances for snowmelt events and drain down from heaps during power outages in the design.

(iv) You must construct a secondary containment system around vats, tanks, or recovery circuits adequate to prevent the release of toxic solutions to the environment in the event of primary containment failure.

(v) You must exclude access by the public, wildlife, or livestock to solution containment and transfer structures that contain lethal levels of cyanide or other solutions.

(vi) During closure and at final reclamation, you must detoxify leaching solutions and heaps and manage tailings or other process waste to minimize impacts to the environment from contact with toxic materials or leachate. Acceptable practices to detoxify solutions and materials include natural degradation, rinsing, chemical treatment, or equally successful alternative methods. Upon completion of reclamation, all materials and discharges must meet applicable standards.

(vii) In cases of temporary or seasonal closure, you must provide adequate maintenance, monitoring, security, and financial guarantee, and BLM may require you to detoxify process solutions.

(13) *Maintenance and public safety.* During all operations, the operator shall maintain his or her structures, equipment, and other facilities in a safe and orderly manner. Hazardous sites or conditions resulting from operations shall be marked by signs, fenced, or otherwise identified to alert the public in accordance with applicable Federal and state laws and regulations.

7. Revise § 3809.421 effective December 31, 2001, to read as follows:

§ 3809.421 Enforcement of performance standards.

Failure of the operator to prevent unnecessary or undue degradation or to complete reclamation to the standards described in this subpart may cause the operator to be subject to enforcement as described in §§ 3809.600 thorugh 3809.605 of this subpart.

8. Revise section 3809.598 to read as follows:

§ 3809.598 What if the amount forfeited will not cover the cost of reclamation?

If the amount forfeited is insufficient to pay for the full cost of reclamation, the operators and mining claimants are liable for the remaining costs as set forth in § 3809.116. BLM may complete or authorize completion of reclamation of the area covered by the financial guarantee and may recover from responsible persons all costs of reclamation in excess of the amount forfeited.

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Part IV

Department of Defense

Office of the Secretary

Science and Technology (S&T) Reinvention Laboratory Personnel Management Demonstration Project at the United States Army Communications-Electronics Command (CECOM), Research, Development and Engineering (RDE) Community; Notice

DEPARTMENT OF DEFENSE

Office of the Secretary

Science and Technology (S&T) Reinvention Laboratory Personnel Management Demonstration Project at the United States Army Communications-Electronics Command (CECOM), Research, Development and Engineering (RDE) Community

AGENCY: DoD, Office of the Deputy Assistant Secretary of Defense (Civilian Personnel Policy).

ACTION: Notice of approval of a demonstration project final plan.

SUMMARY: The National Defense Authorization Act for Fiscal Year 1995, as amended by Section 1114 of the National Defense Authorization Act for Fiscal Year 2001, authorizes the Secretary of Defense to conduct personnel demonstration projects at Department of Defense (DoD) laboratories designated as Science and Technology (S&T) Reinvention Laboratories. The above-cited legislation authorizes DoD to conduct demonstration projects that experiment with new and different personnel management concepts to determine whether such change in personnel policy or procedures would result in improved Federal personnel management.

DATES: Implementation of this demonstration project will begin by February 1, 2002, or earlier. Participating organizations will be phased into the project in accordance with the implementation time frames approved by the Office of the Assistant Secretary of the Army (Manpower and Reserve Affairs).

FOR FURTHER INFORMATION CONTACT: CECOM RDE Community: Thomas Sheehan, U. S. Army Communications-Electronics Command, Research Development and Engineering Center, (AMSEL–RD–LQ), Myer Center, Fort Monmouth, New Jersey 07703–5201, (732) 427–4465. DoD: Patricia M. Stewart, CPMS–AF, Suite B–200, 1400 Key Boulevard, Arlington, VA 22209–5144.

SUPPLEMENTARY INFORMATION:

1. Background

Since 1966, many studies of Department of Defense (DoD) laboratories have been conducted on laboratory quality and personnel. Almost all of these studies have recommended improvements in civilian personnel policy, organization, and management. The project involves: (1) Two appointment authorities (permanent and modified term); (2) extended probationary period for newly hired Engineering and Science employees; (3) pay banding; (4) streamlined delegated examining; (5) modified reduction-in-force (RIF) procedures; (6) simplified job classification; (7) a pay-for-performance based appraisal system; (8) academic degree and certificate training; (9) sabbaticals; and (10) a voluntary emeritus corps.

2. Overview

On June 19, 2001, DoD published the proposed demonstration project in the **Federal Register** (66 FR 32983–33012). During the public comment period ending August 11, 2001, DoD received comments from 16 individuals, including 11 individuals who presented oral comments at the public hearing held at Fort Monmouth, NJ on July 12, 2001. All comments were carefully considered. Some commenters addressed topics that lie outside the project's scope or the demonstration authority of 5 U.S.C. Chapter 47 (*e.g.,* whether or not unions choose to embrace this demonstration). These comments are not included in the summary below. The following summary addresses the pertinent comments received, provides responses, and notes resultant changes to the original project plan in the first **Federal Register** notice. Most commenters addressed several topics, which were counted separately. Thus, the total number of comments exceeds the number of individuals cited above.

A. General Positive Comments

Six commenters were totally supportive of the demonstration, saying that a performance-based system will be better than the current system, that it will make clear distinctions between top performers and mediocre ones, and that the personnel demonstration project offers a real opportunity for all employees and will work very well.

B. Pay for Performance Appraisal System

Seven comments were received about pay for performance.

(1) Reconciliation Process

Comments: Two commenters expressed concern that the reconciliation process might be influenced by non-performance factors such as the availability and leadership dynamics of the officials involved, that the process might be too subjective and removed from the employee, and that scores might be reconciled to benefit unduly those personnel working on favored programs. One commenter suggested adding some form of oversight to the process.

Response: The reconciliation process provides for a structured, group review of initial scores by raters within an organizational unit. Each employee's preliminary scores are compared, and through discussion and consensus building, ratings are reconciled. After the division chiefs have initially met and reconciled scores, the Pay Pool Manager performs an overview of the distribution of ratings and payouts in an effort to achieve consistent ratings across the organization and resolve any scoring issues. This process is similar to the informal process many managers currently use within their own organization to compare performance levels with ratings and performance awards. The demonstration's formal reconciliation process expands this comparison across organizational lines and provides a forum to share initial assessments to ensure equity and consistency.

(2) Pay Pools

Comments: Three inquiries were received regarding pay pools, as follows: Whether team leaders would be part of a supervisory pay pool or a non-supervisory pay pool; whether the guidelines for determining pay pools can be waived when circumstances prevent meeting them; and which pay pool would include Pay Band V employees.

Response: As to the first question of team leaders, language has been added that would permit those team leaders classified by the GS Leader Grade-Evaluation Guide to be included in the supervisory pay pool. Other leaders who have project responsibility but do not actually lead other workers would be appropriately placed in non-supervisory pay pools. As to the second question on how pay pools would be structured, language has been added that authorizes RDE Center Directors to deviate from the guidelines. As to the third question, a Pay Band V employee would be assigned to the supervisory pay pool within his/her organization, because Pay Band V employees by definition have full managerial and supervisory authority.

(3) Significant Accomplishment/ Contribution Rule

Comment: Two comments were received relating to this rule. The first suggested that the performance of those affected by the rule should be compared only to other engineers and scientists in the pay pool, rather than to all

employees in the pay pool. The second comment suggested applying the rule to all occupational families and all pay bands at or above the GS–14 equivalent level.

Response: We have carefully considered these comments. The rule links the total performance score to the amount of base pay increase an employee can receive. All scores in the pay pool are placed in rank order. Employees whose scores fall in the top third of scores in the pay pool will receive the full allowable base pay increase portion of the performance pay out. Employees whose scores fall in the middle or bottom third will receive a base pay increase of 1 percent of salary or no base pay increase, respectively. The comment proposes that, since the rule only affects DB–III employees, only the scores of DB–III employees should be ranked to determine whose scores fall in the top, middle, or bottom third.

We performed mock rankings in order to assess the effects of the methodology originally proposed versus that suggested by the commenter. Our analysis shows that, since scores are being ranked and not individual employees, it is more advantageous for DB–III employees to be part of a larger ranking (all employees in the pay pool) than a smaller ranking (only E&S employees in the pay pool). The way the rule is currently defined enhances the potential for DB–III employees to receive a score ranked in the upper third and, hence, to receive the full base pay increase.

As to the comment that the rule should be expanded to the Business and Technical family, this rule was imposed to maintain a degree of cost discipline for DB–III employees, because their pay band uniquely spans three high grades under the Governmentwide personnel system, GS–12 through –14. Promotion to GS–14 currently requires scientists and engineers to assume supervisory responsibilities or apply highly specialized technical knowledge. The normal progression of a non-supervisory engineer or scientist is to GS–13. The rule in question allays concerns that DB–III employees would otherwise have the potential to progress to the highest salary in the band without necessarily operating at increased levels of performance or responsibility.

The bands for the Business & Technical (B&T) family were designed differently, with DE–II spanning grades 12–13 and DE–III reserved for 14–15. To go from Band II to Band III would normally require a competitive promotion to a new position of greater responsibility. Since pay progression for the B&T family is already limited by splitting the pay bands between grades 13 and 14, cost discipline is already factored into the band design.

C. Management Issues

(1) Fairness

Comment: Three comments were received addressing the need for fair and unbiased performance ratings. One commenter expressed concern about managers' ability to motivate employees to be top performers, while recognizing that there are also employees who do not perform or contribute their share of the work. Another commenter saw the potential for favoritism under both the current system and the demonstration. Still another suggested that the current performance management system be improved.

Response: The demonstration project incorporates a number of features to address these concerns. These features include a Personnel Management Board at the RDE level and the Center level to provide oversight for the project, including equity issues. Membership on the RDE board includes the CECOM Deputy Chief of Staff for Personnel, the Deputy Chief of Staff for Operations and Plans, and the Equal Employment Opportunity Officer, among others. Specific features of the pay for performance appraisal system were designed to address concerns of fairness and potential for favoritism. They include the reconciliation process as previously described, which is specifically designed to balance ratings based on comparisons of the levels and quality of performance across the organization. A feedback mechanism was designed so that, following the appraisal cycle, employees will rate their managers on a number of dimensions. This will help identify developmental needs. Additionally, a thorough training program has been designed for all supervisors associated with the demonstration project, with particular emphasis on skills needed in appraising performance. Specific modules will be offered on giving and receiving performance feedback, resolving conflict and confrontation in performance reviews, addressing developmental needs, rating performance, etc. Lastly, demonstration results will be analyzed and evaluated to determine if they are effective. Perceived fairness of the appraisal process has been identified as an item for evaluation and will be included in surveys of the workforce and focus group discussions with employees.

(2) Managerial Preparedness

Comments: A commenter questioned management's readiness to administer a complex pay for performance system.

Response: The CECOM RDE has made a significant commitment to this demonstration project. In addition to the training program previously described, automation tools have been developed to simplify procedural aspects of the new system and offer better analytical tools to support key decisions.

D. Credit for Performance

Comment: A commenter felt that the method of calculating credit for performance in reduction in force (RIF) places greater weight on performance during the past three years than on experience, which might disadvantage older workers.

Response: Under the current TAPES system, employees receive additional service credit based upon their three most recent performance ratings during the 4 years prior to a RIF. This process is unchanged. The demonstration project changes the method of computing credit for performance by linking the additional years of credit to the total performance score (rather than to the summary level, as in the traditional title 5 system) and by adding the years instead of averaging them. This new methodology does place greater emphasis on performance, which is consistent with the demonstration's pay for performance system.

E. Modifications to the Project Plan

Comment: If the project later requires modifications, one commenter asked, who determines the extent of notification requirements?

Response: The Office of the Deputy Assistant Secretary of Defense (Civilian Personnel Policy) will determine the extent of notification requirements.

F. Close-out Evaluations and Awards

Comment: One commenter questioned whether there would be a performance closeout rating under the current system known as TAPES, and if so, how would any award associated with the appraisal be processed and factored into the employees' pay when they convert to the demonstration project.

Response: A closeout performance appraisal will be required for some employees, depending on when their last appraisal was given. If there were a Quality Step Increase associated with the appraisal, it would be effective prior to implementation of the demonstration project. The employee would then convert into the demo at the higher salary rate. (If there were a performance award associated with the appraisal, it

would have no effect on base pay, because such awards are paid as a one-time cash bonus.)

G. Performance Improvement

Comment: One commenter asked how management will help the under-achiever to improve to an acceptable level of performance.

Response: The demonstration project plan addresses this topic in several ways. As soon as the unacceptable performance is noted, the supervisor is to inform the employee. At this point, it is appropriate to identify the possible reasons and explore some options such as counseling, training, closer supervision, or a temporary assignment to another unit in the organization. Actions that are more formal may also be taken at this point. In that case, a written notice outlining the unacceptable performance must be provided to the employee in the form of a Performance Improvement Plan (PIP). The PIP will identify the items/actions that need to be corrected or improved, outline required time frames for such improvement, and provide the employee with any available assistance as appropriate.

H. Cost Discipline

Comment: A commenter inquired about the source of funds for supervisory pay adjustments.

Response: Supervisory and team leader pay adjustments can be up to 10 percent of base pay for supervisors and up to 5 percent of base pay for team leaders. These pay adjustments are funded separately from pay pools, must be funded from project funds, and are subject to budget constraints. These adjustments will be used selectively, not routinely, to compensate only those supervisors and/or team leaders who meet detailed criteria contained in demonstration project operating procedures. They are subject to approval by the Director, RDEC, or the Director, SEC.

I. Within-Grade Increase Buy-Ins

Comment: A commenter asked if employees who enter the demonstration project after initial implementation would be awarded that portion of the next higher step they have completed.

Response: Language has been added to paragraph V.A. of the demonstration project plan to address this issue. It provides for employees who enter the demonstration project after initial implementation by lateral transfer, reassignment, or realignment to be subject to the same pay conversion rules. Specifically, adjustments to the employee's base salary for a step increase and a non-competitive career ladder promotion will be computed as a prorated share of the current value of the step or promotion increase based upon the number of weeks an employee has completed toward the next high step or grade at the time the employee moves into the project.

J. Other Changes to Project Plan

No comments were received regarding staffing supplements. However, language has been added at III. E. 8. to clarify how staffing supplements will be calculated and administered under this demonstration. Additionally, the language at III. F. 1. b., Critical Skills Training (Training for Degrees) has been amended to reflect changes in this area made necessary by section 1121 of the National Defense Authorization Act for FY 01.

Dated: October 22, 2001.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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I. Executive Summary

This project was designed by the U.S. Army Communications-Electronics Command (CECOM), Research, Development and Engineering (RDE) organizations, with participation and review by the Department of the Army (DA) and Department of Defense (DoD). CECOM RDE organizations are defined as the CECOM Research, Development and Engineering Center (RDEC) and the CECOM Software Engineering Center (SEC). Both the RDEC and SEC headquarters are located at Fort Monmouth, New Jersey.

The primary mission of the CECOM (RDE) organizations is focused on moving the 21st Century Army fully into the Information Age. Although these organizations are predominantly organized around a technology-centric theme, Information Age technologies will allow us to think in network-centric terms, i.e., the system-of-systems way of organizing, acquiring and maintaining our forces and capability. The RDE's vision is to enable commanders at all echelons to make truly informed and timely decisions, and see to it that those decisions get executed, as events require. In simple terms, getting the right information to the right place at the right time. CECOM RDE organizations support the war fighting and sustaining base communities as well as Program Executive Offices, Project Managers and other customers. We manage technology-based programs by defining, developing and acquiring superior technologies; developing, acquiring, testing and evaluating systems; and sustaining and enhancing systems and equipment for a trained and ready Army undergoing revolutionary changes. To do this, CECOM RDE organizations must be able to hire and retain enthusiastic, innovative, and highly educated scientists and engineers to meet mission needs, along with dynamic, committed technical, clerical, and administrative support personnel.

The goal of the project is to enhance the quality and professionalism of the CECOM RDE workforce through improvements in the efficiency and effectiveness of the human resource system. The project interventions will strive to achieve the best workforce for the RDE mission, adjust the workforce for change, and improve workforce satisfaction. This demonstration project builds on the concepts, and uses much of the same language, as the demonstration projects developed by the Army Research Laboratory (ARL), the Aviation and Missile Research, Development, and Engineering Center

(AMCOM RDEC), the Navy's ''China Lake,'' and the National Institute of Standards and Technology (NIST). DoD and Department of the Army (DA) will provide for an evaluation of the results of the project throughout the first 5 years after implementation. The Army has programmed a decision point 5 years into the project for permanent implementation, modification and additional testing, or termination of the entire demonstration project.

II. Introduction

A. Purpose

The purpose of the project is to demonstrate that the effectiveness of Department of Defense (DoD) laboratories can be enhanced by expanding opportunities available to employees and by allowing greater managerial control over personnel functions through a more responsive and flexible personnel system. The quality of DoD laboratories, their people, and products has been under intense scrutiny in recent years. A common theme has emerged that Federal laboratories need more efficient, cost effective, and timely processes and methods to acquire and retain a highly creative, productive, educated, and trained workforce. This project, in its entirety, attempts to improve employees' opportunities and provide managers, at the lowest practical level, the authority, control, and flexibility needed to achieve the highest quality organization and hold them accountable for the proper exercise of this authority within the framework of an improved personnel management system.

Many aspects of a demonstration project are experimental. Modifications may be made from time to time as experience is gained, results are analyzed, and conclusions are reached on how the system is working. The provisions of this project plan will not be modified, duplicated in organizations not listed in the project plan, or extended to individuals or groups of employees not included in the project plan without the approval of the Deputy Assistant Secretary of Defense (Civilian Personnel Policy). ODASD(CPP) will inform DA of requirements for notification to stakeholders, which may include Congress, employees, labor organizations, and the public. The extent of notification requirements will depend on the nature and extent of the requested project modifications. As a minimum, however, major changes and modifications will be published in the **Federal Register**. Subject to ODASD(CPP) approval, minor modifications may be made without further notice.

B. Problems With the Present System

The current Civil Service General Schedule (GS) system has existed in essentially the same form since the 1920's. Work is classified into one of fifteen overlapping pay ranges that correspond with the 15 grades. Pay is set at one of those fifteen grades and the ten interim steps within each grade. The Classification Act of 1949 rigidly defines types of work by series and grade, with very precise qualifications for each job. This system does not quickly or easily respond to new ways of designing work and changes in the work itself.

The performance management model that has existed since the passage of the Civil Service Reform Act has come under extreme criticism. Employees frequently report there is inadequate communication of performance expectations and feedback on performance. There are perceived inaccuracies in performance ratings with general agreement that the ratings are inflated and often unevenly distributed by grade, occupation and geographic location.

The need to change the current hiring system is essential as CECOM RDE organizations must be able to recruit and retain scientific, engineering and information technology (IT) professionals. The CECOM RDE organizations must be able to compete with the private sector for the best talent and be able to make job offers in a timely manner with the attendant bonuses and incentives to attract high quality employees.

Finally, current rules on training, retraining and otherwise developing employees make it difficult to correct skill imbalances and to prepare current employees for new lines of work to meet changing missions.

C. Changes Required/Expected Benefits

The primary benefit expected from this demonstration project is greater organizational effectiveness through increased employee satisfaction. The long-standing Department of the Navy China Lake and NIST demonstration projects have produced impressive statistics on increased job satisfaction and quality of employees versus that for the Federal workforce in general. This project will demonstrate that a human resource system tailored to the mission and needs of the CECOM RDE workforce will result in: (a) Increased quality in the RDE workforce and resultant products; (b) increased timeliness of key personnel processes; (c) increased retention of ''excellent performers''; (d) increased success in recruitment of personnel with critical skills; (e) increased management authority and accountability; (f) increased satisfaction of RDE customers; and (g) increased workforce satisfaction with the personnel management system. An evaluation model was developed by the Director of Defense, Research and Engineering (DDR&E) in conjunction with laboratory and service representatives and the Office of Personnel Management (OPM). The model will measure the effectiveness of demonstration projects, as modified in this plan, and will be used to measure the results of specific personnel system changes.

D. Participating Organizations

The CECOM RDE is composed of two major organizational entities: the Research, Development and Engineering Center (RDEC) and the Software Engineering Center (SEC), both headquartered at Fort Monmouth, New Jersey. RDE employees are geographically dispersed at the locations shown in Appendix A. It should be noted that some sites currently employ fewer than 10 people and that the sites may change as CECOM reorganizes, realigns, or complies with Base Realignment and Closure Act requirements. Successor organizations will continue coverage in the demonstration project.

E. Participating Employees and Union Representation

This demonstration project will cover approximately 2,100 CECOM RDE civilian employees under Title 5, United States Code in the occupations listed in Appendix B. The project plan does not cover members of the Senior Executive Service (SES), Scientific and Professional (S&T) employees, Federal Wage System (FWS) employees, employees presently covered by the Defense Civilian Intelligence Personnel System (DCIPS) and Department of Army (DA) and Major Subordinate Command (MSC) centrally funded interns and co-operative education students. Employees on temporary appointments will not be covered in the demonstration project.

DA, MSC centrally funded, and local interns (hired prior to implementation of the project) will not be converted to the demonstration project until they reach the target grade of the intern program and/or convert to a CECOM RDE employee. They will also continue to follow the TAPES performance appraisal system. Local interns hired after implementation of the project will

be covered by all terms of the demonstration project.

Personnel brought into CECOM RDE organizations either through appointment, promotion, reassignment, change to a lower grade or where their functions and positions have been transferred to an RDE organization will be converted to the demonstration project.

The American Federation of Government Employees (AFGE) and the National Federation of Federal Employees (NFFE) represent many CECOM RDE employees. Of those employees assigned to the CECOM RDE organizations, approximately 50% are represented by labor unions.

In April 1997, unions representing the majority of RDE employees at Fort Monmouth were briefed, along with Directors and senior managers, on the major aspects of the Personnel Demonstration Plan. The unions have received updates as specific proposals evolved during the design phase. The unions have attended town meetings and smaller focus group briefings provided to the workforce. CECOM RDE organizations continue to fulfill our obligation to consult and/or negotiate with all labor organizations in accordance with 5 U.S.C. 4703(f) and 7117.

F. Project Design

In September 1995, a Project Leader was appointed to lead the reinvention effort. During the next several months, waivers to various restrictions in the personnel arena were discussed, and it was learned that these initiatives should be merged into the DoD S&T Reinvention Laboratory Personnel Demonstration Project. Work then began gathering information from the original five Army S&T Reinvention Laboratories. Those demonstration projects were the first to introduce major changes to improve the personnel system specifically tailored to the Army labs.

In the summer/fall of 1997, the RDEC Associate Director for Operations hosted a series of town meetings providing an overview of Personnel Demonstration Projects. These meetings were held at Fort Monmouth and Fort Belvoir, where the majority of CECOM RDE employees are located. Plans were outlined to establish teams of volunteers to design the major aspects of the project, *e.g.,* Pay/Classification, Staffing, Employee Development and Performance Management along with an additional team dedicated to Workforce Communication. All levels of employees, supervisors and the labor organizations were invited to participate. The Associate Director for Operations provided executive oversight and briefed the project to senior managers and those local unions representing a majority of employees. From October 1997 through April 1998, the teams developed their portions of the project as outlined above. During this time, feedback was provided to RDE employees through briefings, newsletters, a web site and a dedicated anonymous electronic mailbox for employees to post questions and receive answers. As the majority of the members on the teams were non-supervisory employees, the opinions and comments of the workforce are clearly reflected in the overall design of this project. A draft proposal was developed and staffed throughout the CECOM RDE organizations and the Command. Comments and requested changes have been incorporated.

To further validate the Pay for Performance (PFP) system, a test was conducted. The goals were to provide employees feedback on how they might fare under PFP, increase employee and management participation in the process and identify areas needing improvement before actual implementation. The results of the test were briefed to senior managers, provided to the unions, published in the Personnel Demo Newsletter, and placed on the website. An interactive tool is also available on the Web site which permits employees to input their current salary and calculate performance pay outs based upon projected performance scores.

G. Personnel Management Board

CECOM RDE organizations will create an RDE Personnel Management Board (PMB) to oversee and monitor the fair, equitable, and consistent implementation of the provisions of the demonstration project to include establishment of internal controls and accountability. Permanent members of the board will include RDE senior leaders appointed by the RDE Center Directors. Other members include the CECOM Deputy Chief of Staff for Personnel (DCSPER), Deputy Chief of Staff for Operations and Plans (DCSOPS), and Equal Employment Officer (EEO) to ensure proper management and oversight of the project. Sub-boards may be established at the Center level, reporting to the RDE Personnel Management Board, to address specific issues within the scope of the separate CECOM RDE organizations. The boards will execute the following:

(a) Determine the composition of the pay-for-performance pay pools in accordance with the guidelines of this proposal and internal procedures;

(b) Review operation of pay pools and provide guidance to Pay Pool Managers;

(c) Oversee disputes in pay pool issues;

(d) Formulate and execute the civilian pay budget;

(e) Manage the awards pools;

(f) Determine hiring and promotion salaries as well as exceptions to pay for performance salary increases;

(g) Conduct classification review and oversight, monitoring and adjusting classification practices and deciding board classification issues;

(h) Approve major changes in position structure;

(i) Address issues associated with multiple pay systems during the demonstration project;

(j) Establish Standard Performance Elements and Benchmarks;

(k) Assess the need for changes to demonstration project procedures and policies;

(l) Review requests for Supervisory/Team Leader Pay Adjustments and provide recommendations to the appropriate Center Director;

(m) Ensure in-house budget discipline;

(n) Manage the number of employees by occupational family and pay band;

(o) Develop policies and procedures for administering Developmental Opportunity Programs;

(p) Ensure that all employees are treated in a fair and equitable manner in accordance with all policies, regulations and guidelines covering this demonstration project; and,

(q) Monitor the evaluation of the project.

III. Personnel System Changes

A. Pay Banding

The design of the CECOM RDE pay banding system takes advantage of the many reviews performed by DA and DoD. The design has the benefit of being preceded by exhaustive studies of pay banding systems currently practiced in the Federal sector, to include those practiced by the Navy's ''China Lake'' experiment and NIST. The pay banding system will replace the current General Schedule (GS) structure. Currently the 15 grades of the General Schedule are used to classify positions and, therefore, to set pay. The General Schedule covers all white-collar work-administrative, technical, clerical and professional. Changes in this rigid structure are required to allow flexibility in hiring, developing, retaining, and motivating the workforce.

1. Occupational Families

Occupations with similar characteristics will be grouped together into one of three occupational families with pay band levels designed to facilitate pay progression. Each occupational family will be composed of pay bands corresponding to recognized advancement and career progression expected within the occupations. These pay bands will replace individual grades and will not be the same for each occupational family. Each occupational family will be divided into three to five pay bands with each pay band covering the same pay range now covered by one or more GS grades. Employees track into an occupational family based on their current series as provided in Appendix B. Upon implementation employees are initially assigned to the highest band in which their grade fits. For example a Management Analyst GS–343–12 in the Business and Technical Family is assigned to Pay Band III as illustrated in Figure 1. The upper and lower salary limit of each band is defined by the salary of the GS grade and step as indicated in Figure 1. Comparison to the GS grades was used in setting the upper and lower dollar limits of the pay band levels; however, once employees are moved into the demonstration project, GS grades will no longer apply. The current occupations have been examined, and their characteristics and distribution have served as guidelines in the development of the following three occupational families:

Engineering and Science (E&S) (Pay Plan DB): This occupational family includes technical professional positions, such as engineers, physicists, chemists, mathematicians, operations research analysts and computer scientists. Specific course work or educational degrees are required for these occupations. Five bands have been established for the E&S occupational family:

Band I is a student trainee track covering GS–1, step 1 through GS–4, step 10.

Band II is a developmental track covering GS–5, step 1 through GS–11, step 10.

Band III * is a full-performance technical track covering GS–12, step 1 through GS–14, step 10.

Band IV * includes both senior technical positions along with supervisors-managers covering GS–14, step 1 through GS–15, step 10.

* Bands III and IV overlap at the end and start points. These two bands have been designed following a feature used by the Navy's ''China Lake'' project. Upon implementation, employees in the E&S family currently at grade GS–14 are assigned to Band IV.

Band V is a senior scientific-technical manager. The salary range is from 120 percent of the minimum rate of basic pay for a GS–15 to a maximum rate of SES level 4 (ES–4) excluding locality pay.

Business & Technical (B&T) (Pay Plan DE): This occupational family includes such positions as computer specialists, equipment specialists, quality assurance specialists, telecommunications specialists, engineering and electronics technicians, procurement coordinators, finance, accounting, administrative computing, and management analysis. Employees in these positions may or may not require specific course work or educational degrees. Four bands have been established for the B&T occupational family:

Band I is a student trainee track covering GS–1, step 1 through GS–4, step 10.

Band II is a developmental track covering GS–5, step 1 through GS–11, step 10.

Band III is a full performance track covering GS–12, step 1 through GS–13, step 10.

Band IV is a senior technical/manager track covering GS–14, step 1 through GS–15, step 10.

General Support (GEN) (Pay Plan DK): This occupational family is composed of positions for which specific course work or educational degrees are not required. Clerical work usually involves the processing and maintenance of records. Assistant work requires knowledge of methods and procedures within a specific administrative area. This family includes such positions as secretaries, office automation clerks, and budget/program/computer assistants. Three bands have been established for the GEN occupational family:

Band I includes entry-level positions covering GS–1, step 1 through GS–4, step 10.

Band II includes full-performance positions covering GS–5, step 1 through GS–8, step 10.

Band III includes senior technicians/assistants/secretaries covering GS–9 step 1 through step 10.

2. Pay Band Design

The pay bands for the occupational families and how they relate to the current GS framework are shown in Figure 1.

FIGURE 1.—PAY BAND CHART

Occupational family	Equivalent GS grades				
	I	II	III	IV	V
E&S	GS–01—GS–04	GS–05—GS–11	GS–12—GS–14	GS–14—GS–15	>GS–15
Business & Technical	GS–01—GS–04	GS–05—GS–11	GS–12—GS–13	GS–14—GS–15	
General Support	GS–01—GS–04	GS–05—GS–08	GS–09		

Employees will be converted into the occupational family and pay band that corresponds to their GS/GM series and grade. Each employee is assured an initial place in the system without loss of pay. New hires will ordinarily be placed at the lowest salary in a pay band. Exceptional qualifications, specific organizational requirements, or other compelling reasons may lead to a higher entrance salary within a band. As the rates of the General Schedule are increased due to general pay increases, the upper and lower salary limits of the pay bands will also increase. Since pay progression through the bands depends directly on performance, there will be no scheduled Within-Grade Increases (WIGIs) or Quality Step Increases (QSIs) for employees once the pay banding system is in place. Special salary rates will no longer be applicable to demonstration project employees. Special provisions have been included to ensure conversion without a loss of pay (See section E, paragraph 8, Staffing Supplements).

3. Pay Band V

The CECOM RDE pay banding plan expands the pay banding concept used at China Lake and NIST by creating Pay Band V for the Engineering and Science occupational family. This pay band is designed for Senior Scientific Technical Managers (SSTM). The current definitions of Senior Executive Service (SES) and Scientific and Professional (ST) positions do not fully meet the needs of the CECOM RDE organizations.

The SES designation is appropriate for executive level managerial positions whose classification exceeds grade 15 of

the General Schedule. The primary knowledge and abilities of SES positions relate to supervisory and managerial responsibilities. Positions classified as ST are designed for bench research scientists and engineers. These positions require a very high level of technical expertise and have little or no supervisory responsibilities.

CECOM RDE organizations currently have positions that warrant classification above grade 15 of the General Schedule because of their technical expertise requirements. These positions, typically division/office chiefs, have characteristics of both SES and ST classifications. Most of these positions are responsible for supervising other GS–15 positions, including lower level supervisors, non-supervisory engineers and scientists, and in some cases ST positions. The supervisory and managerial requirements exceed those appropriate for ST positions.

Management considers the primary requirement for these positions to be knowledge of and expertise in the specific scientific and technology areas related to the mission of their organizations, rather than the executive leadership qualifications that are characteristic of the SES. Historically, incumbents of these positions have been recognized within the community as scientific and engineering leaders who possess strong managerial and supervisory abilities. Therefore, although some of these employees have scientific credentials that might compare favorably with ST criteria, classification of these positions as STs is not an option because the managerial and supervisory responsibilities cannot be ignored.

Pay Band V will apply to a new category of positions designated as Senior Scientific Technical Managers (SSTM). Positions so designated will include those requiring scientific/technical expertise and full managerial and supervisory authority. Their scientific/technical expertise and responsibilities warrant classification above the GS–15 level.

Current GS–15 division/office chiefs will convert into the demonstration project at Pay Band IV. After conversion they will be reviewed against established criteria to determine if they should be reclassified to Pay Band V. Other positions possibly meeting criteria for designation as SSTM will be reviewed on a case-by-case basis. The salary range for SSTM positions is a minimum of 120 per cent of the minimum rate of basic pay for GS–15 with a maximum rate of basic pay established at the rate of basic pay (excluding locality pay) for SES level 4 (ES–4).

Vacant SSTM positions will be filled competitively to ensure that selectees are preeminent technical leaders in specialty fields who also possess substantial managerial and supervisory abilities. The CECOM RDE organizations will capitalize on the efficiencies that can accrue from central recruiting by continuing to use the expertise of the Army Materiel Command SES Office as the recruitment agent.

Panels will be created to assist in filling SSTM positions. Panel members typically will be current or former SES members, ST employees and later those designated as SSTMs. In addition, senior military officers and recognized technical experts from outside the RDE organizations may also serve as appropriate. The panel will apply criteria developed largely from the current OPM Research Grade-Evaluation Guide for positions exceeding the GS–15 level. The purpose of the panel is to insure impartiality, breadth of technical expertise and a rigorous and demanding review.

DoD will test SSTM positions for a five-year period. SSTM positions will be subject to limitations imposed by OPM and DoD. SSTM positions will be established only in an S&T Reinvention Laboratory that employs scientists, engineers, or both. Incumbents of these positions will work primarily in their professional capacity on basic or applied research. Secondarily, they will also perform managerial or supervisory duties.

The number of SSTM positions, and the equivalent in other approved S&T reinvention laboratory personnel demonstration projects within DoD, will not exceed 40. These 40 positions will be allocated by the Assistant Secretary of Defense (Force Management Policy) and administered by the respective Services. The number of positions will be reviewed periodically to determine appropriate position requirements. SSTM (and the equivalent in other S&T reinvention laboratories demonstration projects) position allocations will be managed separately from SES, ST, and SL allocations. An evaluation of the concept for these positions will be performed during the fifth year of the demonstration project.

The final component of Pay Band V is the management of all Pay Band V assets. Specifically, this authority will be exercised at the DA level, and includes the following: authority to classify, create, or abolish positions within the limitations imposed by OPM and DoD; recruit and reassign employees in this pay band; set pay and appraise performance under this project's Pay for Performance system. The CECOM RDE organizations want to demonstrate increased effectiveness by gaining greater managerial control and authority, consistent with merit, affirmative action, and equal employment opportunity principles.

B. Classification

1. Occupational Series

The present General Schedule classification system has 434 occupational series, which are divided into 22 occupational groupings. The CECOM RDE organizations currently have positions in approximately 70 occupational series that fall into 14 occupational groupings. All positions listed in Appendix B will be in the classification structure. Provisions will be made for including other occupations in response to changing missions.

2. Classification Standards and Position Descriptions

CECOM RDE organizations will use a fully automated classification system modeled after the Navy's ''China Lake'' and ARL. ARL has developed a Web-based automated classification system that can create standardized, classified, position descriptions under the new pay banding system in a matter of minutes. The present system of OPM classification standards will be used for the identification of proper series and occupational titles of positions within the demonstration project. Current OPM Position Classification Standards will not be used to grade positions in this project. However, the grading criteria in those standards will be used as a framework to develop new and simplified standards for the purpose of pay band determinations. The objective is to record the essential criteria for each pay band within each occupational family by stating the characteristics of the work, the responsibilities of the position, and the knowledge, skills, and abilities required. New position descriptions will replace the current DA Form 374, Department of the Army Job Description. The classification standard for each pay band will serve as an important component in the new position description, which will also include position-specific information, and provide data element information pertinent to the job. Supervisors will follow a computer-assisted process to produce position descriptions. The new descriptions will be easier to prepare, minimize the amount of writing time and make the position description a more useful and accurate tool for other personnel management functions.

Specialty work codes will be used to further differentiate types of work and the skills and knowledge required for particular positions with an occupational family and pay band. Each code represents a specialization or type of work within the occupation.

3. Fair Labor Standards Act

Fair Labor Standards Act (FLSA) exemption and non-exemption determinations will be consistent with criteria found in 5 CFR (Code of Federal Regulations) part 551. All employees are covered by the FLSA unless they meet the criteria for exemption. The duties and responsibilities outlined in the classification standards for each pay band will be compared to the FLSA criteria. As a general rule, the FLSA status can be matched to occupational family and pay band as indicated in Figure 2. For example, positions classified in Pay Band I of the E&S occupational family are typically nonexempt, meaning they are covered by the overtime entitlements prescribed by the FLSA. An exception to this guideline includes supervisors/managers who meet the definitions outlined in the OPM General Schedule Supervisory Guide and who spend 80 percent or more of the workweek on supervisory duties. Therefore, supervisors/managers in any of the pay bands who meet the foregoing criteria are exempt from the FLSA. Supervisors with classification authority will make the determinations on a case-by-case basis by comparing assigned duties and responsibilities to the classification standards for each pay band and the 5 CFR part 551 FLSA criteria. Additionally, the advice and assistance of the Civilian Personnel Advisory Center/Civilian Personnel Operations Center (CPAC/CPOC) will be obtained in making determinations. The benchmark position descriptions will not be the sole basis for the determination. Basis for exemption will be documented and attached to each position description. Exemption criteria will be narrowly construed and applied only to those employees who clearly meet the spirit of the exemption. Changes will be documented and provided to the CPAC/CPOC, as appropriate.

FIGURE 2.—FLSA STATUS

[Pay bands]

Occupational family	I	II	III	IV	V
E&S	N	N/E	E	E	E
B&T	N	N/E	E	E	
GEN	N	N	E		

N—Non-Exempt from FLSA; E—Exempt from FLSA.
N/E—Exemption status determined on a case-by-case basis.
Note: Although typical exemption status under the various pay bands is shown in the above table, actual FLSA exemption determinations are made on a case-by-case basis.

4. Classification Authority

CECOM RDE Center Directors will have delegated classification authority and may, in turn, re-delegate this authority to appropriate levels. Position descriptions will be developed to assist managers in exercising delegated position classification authority. Managers will identify the occupational family, job series, functional code, specialty work code, pay band level, and the appropriate acquisition codes. Personnel specialists will provide ongoing consultation and guidance to managers and supervisors throughout the classification process. The manager will document these decisions on a form similar to the present DA Form 374.

5. Classification Appeals

Classification appeals under this demonstration project will be processed using the following procedures: An employee may appeal the determination of occupational family, occupational series, position title, and pay band of his/her position at any time. An employee must formally raise the area of concern to supervisors in the immediate chain of command, either verbally or in writing. If the employee is not satisfied with the supervisory response, he/she may then appeal to the DoD appellate level. Appeal decisions rendered by DoD will be final and binding on all administrative, certifying, payroll, disbursing, and accounting officials of the government. Classification appeals are not accepted on positions which exceed the equivalent of a GS–15 level. Time periods for cases processed under 5 CFR, part 511 apply.

An employee may not appeal the accuracy of the position description, the demonstration project classification criteria, or the pay-setting criteria; the assignment of occupational series to the occupational family; the propriety of a salary schedule; or matters grievable under an administrative or negotiated grievance procedure, or an alternative dispute resolution procedure.

The evaluations of classification appeals under this demonstration project are based upon the demonstration project classification criteria. Case files will be forwarded for adjudication through the CPAC/CPOC providing personnel service and will include copies of appropriate demonstration project criteria.

C. Pay for Performance

1. Overview

The purpose of the PFP system is to provide an effective, efficient, and flexible method for assessing, compensating, and managing the RDE workforce. It is essential for the development of a highly productive workforce and to provide management at the lowest practical level, the authority, control, and flexibility needed to achieve a quality organization and meet mission requirements. PFP allows for more employee involvement in the assessment process, strives to increase communication between supervisor and employee, promotes a clear accountability of performance, facilitates employee career progression, and provides an understandable and rational basis for salary changes by linking pay and performance.

The PFP system uses annual performance payouts that are based on the employee's total performance score rather than within-grade increases, quality step increases, promotions from one grade to another where both grades are now in the same pay band (i.e., there are no within-band promotions) and performance awards. The normal rating period will be one year. The minimum rating period will be 120 days. PFP payouts can be in the form of increases to base pay or in the form of bonuses that are not added to base salary but rather are given as a lump sum bonus. Other awards such as special acts, time-off awards, etc., will be retained separately from the PFP payouts.

The system will have the flexibility to be modified, if necessary, as more experience is gained under the project.

2. Performance Objectives

Performance objectives define a target level of activity, expressed as a tangible, measurable objective, against which actual achievement can be compared. These objectives will specifically identify what is expected of the employee during the rating period and will typically consist of 3 to 10 results-oriented statements. The employee and his/her supervisor will jointly develop the employee's performance objectives at the beginning of the rating period. These are to be reflective of the employee's duties/responsibilities and pay band along with the mission/organizational goals and priorities. Objectives will be reviewed annually and revised upon changes in salary reflecting increased responsibilities commensurate with salary increases. Use of generic one-size-fits-all objectives will be avoided, as performance objectives are meant to define an individual's specific responsibilities and expected accomplishments. In contrast, performance elements as described in the next paragraph, will identify generic performance characteristics, against which the accomplishment of objectives will be measured. As a part of this demonstration project, training focused on overall organizational objectives and the development of performance objectives will be held for both supervisors and employees. Performance objectives may be jointly modified, changed or deleted as appropriate during the rating cycle. As a general rule, performance objectives should only be changed when circumstances outside the employee's control prevent or hamper the accomplishment of the original objectives. It is also appropriate to change objectives when mission or workload shifts occur.

3. Performance Elements

Performance elements define generic performance characteristics that will be used to evaluate the employee's success in accomplishing his/her performance objectives. The use of generic characteristics for scoring purposes helps to ensure comparable scores are assigned while accommodating diverse individual objectives. This pay-for-performance system will utilize those performance elements provided in Appendix C. All elements are critical. A critical performance element is defined as an attribute of job performance that is of sufficient importance that performance below the minimally acceptable level requires remedial action and may be the basis for removing an employee from their position. Non-critical elements will not be used. Each of the performance elements will be assigned a weight, which reflects its importance in accomplishing an individual's performance objectives. A minimum weight is set for each performance element. The sum of the weights for all of the elements must equal 100.

A single set of performance elements will be used for evaluating the annual performance of all CECOM RDE personnel covered by this plan. This set of performance elements may evolve over time, based on experience gained during each rating cycle. This evolution is essential to capture the critical characteristics the organization encourages in its workforce toward meeting individual and organizational objectives. This is particularly true in an environment where technology and work processes are changing at an increasingly rapid pace. The RDE Personnel Management Board will annually review the set of performance elements and set them for the entire organization before the beginning of the rating period. The following is an initial set of performance elements along with the minimum weight:

(1) Technical Competence (Minimum Weight: 15%)
(2) Interpersonal Skills (Minimum Weight: 10%)
(3) Management of Time and Resources (Minimum Weight: 15%)
(4) Customer Satisfaction (Minimum Weight: 10%)
(5) Team/Project Leadership (Minimum Weight: 15%)
(6) Supervision/EEO (Minimum Weight: 25%)

All employees will be rated against the first four performance elements. Team/Project Leadership is mandatory for team leaders and Supervision/EEO is mandatory for all managers/supervisors. At the beginning of the rating period, Pay Pool Managers will review the objectives and weights assigned to employees within the pay pool, to verify consistency and appropriateness.

4. Performance Feedback and Formal Ratings

The most effective means of communication is person-to-person discussion between supervisors and employees of requirements, performance goals and desired results. Employees and supervisors alike are expected to actively participate in these discussions for optimum clarity regarding expectations and identify potential obstacles to meeting goals. In addition, employees should explain (to the extent possible) what they need from their supervisor to support goal accomplishment. The timing of these discussions will vary based on the nature of work performed, but will occur at least at the mid-point and end of the rating period. The supervisor and employee will discuss job performance and accomplishments in relation to the performance objectives and elements. At least one review, normally the mid-point review, will be documented as a formal progress review. More frequent, task specific, discussions may be appropriate in some organizations. In cases where work is accomplished by a team, team discussions regarding goals and expectations will be appropriate.

The employee will provide a list of his/her accomplishments to the supervisor at both the mid-point and end of the rating period. An employee may elect to provide self-ratings on the performance elements and/or solicit input from team members, customers, peers, supervisors in other units, subordinates, and other sources which will permit the supervisor to fully evaluate accomplishments during the rating period.

At the end of the rating period, following a review of the employee's accomplishments, the supervisor will rate each of the performance elements by assigning a score between 0 and 50. Benchmark performance standards have been developed that describe the level of performance associated with a score. Using these benchmarks, the supervisor decides where (at any point on a scale of 0 to 50) the performance of the employee fits and assigns an appropriate score. It should be noted that these scores are not discussed with the employee or considered final until all scores are reconciled and approved by the Pay Pool Manager. The element scores will then be multiplied by the element-weighting factor to determine the weighted score expressed to two decimal points. The weighted scores for each element will then be totaled to determine the employees' overall appraisal score and rounded to a whole number as follows: if the digit to the right of the decimal is between five and nine, it should be rounded to the next higher whole number; if the digit to the right of the decimal is between one and four, it should be dropped.

A total score of 10 or above will result in a rating of acceptable. A total score of 9 or below will result in a rating of unacceptable, and requires the employee be placed on a Performance Improvement Plan (PIP) immediately or following a temporary assignment. A

score of 9 or below in a single element will also result in a rating of unacceptable, and requires the employee be placed on a PIP. A new rating of record will be issued if the employee's performance improves to an acceptable level at the conclusion of the PIP.

5. Unacceptable Performance

Informal employee performance reviews will be a continuous process so that corrective action, to include placing an employee on a Performance Improvement Plan (PIP), may be taken at any time during the rating cycle. Whenever a supervisor recognizes an employee's performance on one or more performance elements is unacceptable, the supervisor should immediately inform the employee. Efforts will be made to identify the possible reasons for the unacceptable performance.

As an informal first step, the supervisor and employee may explore a temporary assignment to another unit in the organization. This recognizes that conflicts sometimes occur between a supervisor and an employee, or that an employee may be assigned to a position for which they are not suited. The supervisor is under no obligation to explore this option prior to taking more formal action. If the temporary assignment is not possible or has not worked out, and the employee continues to perform at an unacceptable level or has received an unacceptable rating, written notification outlining the unacceptable performance will be provided to the employee. At this point an opportunity to improve will be structured in a PIP. The supervisor will identify the items/actions that need to be corrected or improved, outline required time frames (no less than 30 days) for such improvement, and provide the employee with any available assistance as appropriate. Progress will be monitored during the PIP, and all counseling sessions will be documented.

If the employee's performance is acceptable at the conclusion of the PIP, no further action is necessary. If a PIP ends prior to the end of the annual performance cycle and the employee's performance improves to an acceptable level, the employee is appraised again at the end of the annual performance cycle.

If the employee fails to improve during the PIP, the employee will be given notice of proposed appropriate action. This action can include removal from the Federal service, placement in a lower pay band with a corresponding reduction in pay (demotion), reduction in pay within the same pay band, or change in position or occupational family. For the most part, employees with an unacceptable rating will not be permitted to remain at their current salary and may be reduced in pay band. Reductions in salary within the same pay band or changes to a lower pay band will be accomplished with a minimum of a 5 percent decrease in an employee's base pay.

Note: Nothing in this subsection will preclude action under Title 5, United States Code, Chapter 75, when appropriate.

All relevant documentation concerning a reduction in pay or removal based on unacceptable performance will be preserved and made available for review by the affected employee or a designated representative. As a minimum, the record will consist of a copy of the notice of proposed personnel action, the employee's written reply, if provided, or a summary when the employee makes an oral reply. Additionally, the record will contain the written notice of decision and the reasons therefor along with any supporting material (including documentation regarding the opportunity afforded the employee to demonstrate improved performance).

If the employee's performance deteriorates to an unacceptable level, in any element, within two years from the beginning of a PIP, follow-on actions may be initiated with no additional opportunity to improve. If an employee's performance is at an acceptable level for two years from the beginning of the PIP, and performance once again declines to an unacceptable level, the employee will be given an additional opportunity to improve, before management proposes follow-on actions.

6. Reconciliation Process

Following the initial scoring of each employee by the rater, the rating officials in an organizational unit, along with their next level of supervision, will meet to ensure consistency and equity of the ratings. In this step, each employee's performance objectives, accomplishments, preliminary scores and current salary are compared. Through discussion and consensus building, consistent and equitable ratings are reached. Managers will not prescribe a distribution of total scores. The Pay Pool Manager will then chair a final review with the rating officials who report directly to him or her to validate these ratings and resolve any scoring issues. If consensus cannot be reached in this process, the Pay Pool Manager makes all final decisions. After this reconciliation process is complete, scores are finalized. Payouts proceeds according to each employee's final score and current salary. Upon approval of this plan, implementing procedures and regulations will provide details on this process to employees and supervisors.

7. Pay Pools

Employees within the CECOM RDE organizations will be placed into pay pools. Pay pools are combinations of organizational elements (e.g., Directorates, Divisions, Branches, Offices, etc.) that are defined for the purpose of determining performance payouts under the PFP system. The guidelines in the next paragraph are provided for determining pay pools. These guidelines will normally be followed. However, RDE Center Directors may deviate from the guidelines if they determine that there is a compelling need to do so and document their rationale in writing.

The RDE Center Directors will establish pay pools within their respective organizations. Typically, pay pools will have between 35 and 300 employees. A pay pool should be large enough to encompass a reasonable distribution of ratings but not so large as to compromise rating consistency. Supervisory personnel will be placed in a pay pool separate from subordinate non-supervisory personnel. Team leaders classified by the GS Leader Grade-Evaluation Guide will be included in a supervisory pay pool. Those team leaders who have project responsibility but who do not actually lead other workers will be included in a non-supervisory pay pool. Neither the Pay Pool Manager nor supervisors within a pay pool will recommend or set their own individual pay. Decisions regarding the amount of the performance payout are based on the established formal payout calculations.

Funds within a pay pool available for performance payouts are calculated from anticipated pay increases under the existing system and divided into two components, base pay and bonus. The funds within a Pay Pool used for base pay increases, are those that would have been available from within-grade increases, quality step increases and promotions (excluding the costs of promotions still provided under the banding system). This amount will be defined based on historical data and set between 2.0 percent '' 2.4 percent of total salary annually. The funds available to be used for bonus payouts are funded separately within the constraints of the organization's overall award budget. This amount will be defined based on historical data and set between 1.0 percent—1.4 percent of total salary annually. The sum of these

two factors is referred to as the pay pool percentage factor. The RDE Personnel Management Board will annually review the pay pool funding formula and recommend adjustments to the RDE Center Directors to ensure cost discipline over the life of the demonstration project. Cost discipline is assured within each pay pool by limiting the total base pay increase to the funds available, based on what would have been available in the General Schedule system from within-grade increases, quality step increases and within-band promotions. RDE Center Directors may reallocate the amount of funds assigned to each pay pool as necessary to ensure equity and to meet unusual circumstances.

8. Performance Payout Determination

The performance payout an employee will receive is based on the total performance score from the Pay for Performance assessment process. An employee will receive a performance payout as a percentage of current salary. This percentage is based on the number of shares that equates to their final appraisal score. Shares will be awarded on a continuum as follows:

Score = Shares

50 = 3
40 = 2
30 = 1
21 = .1
10–20 = 0
<=9 = 0 (Performance Improvement Plan required)

Fractional shares will be awarded for scores that fall in between these scores. For example: a score of 38 will equate to 1.8 shares, and a score of 44 will equate to 2.4 shares.

The value of a share cannot be exactly determined until the rating and reconciliation process is completed and all scores are finalized. The share value is expressed as a percentage. The formula that computes the value of each share is based on (1) the value of pay pool, (2) the employee's pay, (3) the number of shares awarded to each employee in the pay pool, and (4) the total number of shares awarded in the pay pool. This formula assures that each employee within the pool receives a share amount equal to all others in the same pool who are at the same rate of basic pay and receiving the same score. The formula is shown in figure 3.

Figure 3. Formula

$$\text{Individual Pay Increase} = \frac{\text{Pool Value}}{\text{SUM (tSAL} * \text{tN)}}$$

Where:

F = Payout Factor; initially 3.8 percent of combined basic rates of pay of the assigned employees in a pay pool
SUM = Summation of entities within parenthesis
SAL = An individual's basic rate of pay
tSAL = Total of basic rates of pay in a pay pool
Pool Value = F * (tSAL)
N = Number of shares (0 to 3) earned by an individual employee based on his/her score (0 to 50)
tN = Total of shares earned by employees in pool

A Pay Pool Manager is accountable for staying within pay pool limits. The Pay Pool Manager makes final decisions on pay increases and/or bonuses to individuals based on rater recommendation, the final score, the pay pool funds available, and the employee's current salary. A Pay Pool Manager may request approval from the Personnel Management Board at the Center level or its designee to grant a pay increase to an employee that is higher than the one generated by the compensation formula for that employee. Examples of employees who might warrant such consideration are those making extraordinary achievements or to provide accelerated compensation for a local intern.

9. Base Pay Increases and Bonuses

The amount of money available for performance payouts is divided into two components, base pay increases and bonuses. The base pay and bonus funds are based on the pay pool funding formula established annually. Once the individual performance amounts have been determined, the next step is to determine what portion of each payout will be in the form of a base pay increase as opposed to a bonus payment. The payouts made to employees from the pay pool may be a mix of base pay and bonus, such that all of the allocated funds are disbursed as intended. To continue to provide performance incentives while also ensuring cost discipline, base pay increases may be limited or capped. Certain employees will not be able to receive the projected base pay increase due to base pay caps. Base pay is capped when an employee reaches the maximum rate of pay in an assigned pay band, when the mid-point rule applies (see below) or when the Significant Accomplishment/Contribution rule applies (see below). Also, for employees receiving retained rates above the applicable pay band maximum, the entire performance payout will be in the form of a bonus payment.

When capped, the total payout an employee receives will be in the form of a bonus versus the combination of base pay and bonus. Bonuses are cash payments and are not part of the basic pay for any purpose (e.g., lump sum payments of annual leave on separation, life insurance, and retirement). The maximum base pay rate under this demonstration project will be the unadjusted base pay rate of GS–15/Step 10, except for employees in Pay Band V of the E&S Occupational Family. In this case, the salary range is a minimum of 120 percent of the minimum rate of basic pay for GS–15 with a maximum rate of basic pay established at the rate of basic pay (excluding locality pay) for ES–4.

If the organization determines it is appropriate, it may re-allocate a portion (up to the maximum possible amount) of the unexpended base pay funds for capped employees to uncapped employees. This re-allocation will be determined by the Pay Pool Manager. Any dollar increase in an employee's projected base pay increase will be offset, dollar for dollar, by an accompanying reduction in the employee's projected bonus payment. Thus, the employee's total performance payout is unchanged.

10. Mid-Point Rule

To provide added performance incentives as an employee progresses through a pay band, a mid-point rule will be used to determine base pay increases. The mid-point rule dictates that any employee must receive a score of 30 or higher for their base pay to cross the salary midpoint of their pay band. Also, once an employee's base pay exceeds the salary midpoint of their band, the employee must receive a score of 30 or higher to receive any additional base pay increases. Any amount of an

employee's performance payout, not paid in the form of a base pay increase because of the mid-point rule, will be paid as a bonus. This rule effectively raises the standard of performance expected of an employee once the salary midpoint of a band is crossed. This applies to all employees in every occupational family and pay band.

11. Significant Accomplishment/ Contribution Rule

The purpose of this rule is to maintain cost discipline while ensuring that employee payouts are in consonance with accomplishments and levels of responsibility. The rule will apply only to employees in E&S Band III whose base salary falls within the top 15 percent of the band. For employees meeting these criteria, the following provisions will apply:

If an employee's score falls in the top third of scores received in his/her pay pool, he/she will receive the full allowable base pay increase portion of the performance payout. The balance of the payout will be paid as a lump sum bonus.

If an employee's score falls in the middle third of scores received in his/her pay pool, the base pay increase portion will not exceed 1% of base salary. The balance of the payout will be paid as a lump sum bonus.

If an employee's appraisal score falls in the bottom third of scores received in his/her pay pool, the full payout will be paid as a lump sum bonus.

12. Awards

To provide additional flexibility in motivating and rewarding individuals and groups, some portion of the performance award budget will be reserved for special acts and other categories as they occur. Awards may include, but are not limited to, special acts, patents, suggestions, on the spot, and time-off. The funds available to be used for awards are separately funded within the constraints of the organization's overall award budget.

While not directly linked to the pay for performance system, this additional flexibility is important to encourage outstanding accomplishments and innovation in accomplishing the diverse mission of the CECOM RDE organizations. Additionally, to foster and encourage teamwork among its employees, organizations may give group awards. Under the demonstration project, a team may elect to distribute such awards among themselves.

Thus, a team leader or supervisor may allocate a sum of money to a team for outstanding performance, and the team may decide the individual distribution of the total dollars among themselves. The Commanding General, CECOM will have the authority to grant special act awards to covered employees of up to $10,000 IAW the criteria of AR 672–20, Incentive Awards.

13. General Pay Increase

Employees, who are on a PIP at the time pay determinations are made, do not receive performance payouts or the General Pay Increase. An employee who receives an unacceptable rating of record will not receive any portion of the General Pay Increase or RIF service credit until such time as their performance improves to the acceptable level and remains acceptable for at least 90 days. When the employee has performed acceptably for at least 90 days, the General Pay Increase will not be retroactive but will be granted at the beginning of the next pay period after the supervisor authorizes its payment.

These actions may result in a base salary that is identified in a lower pay band. This occurs because the minimum rate of basic pay in a pay band increases as the result of the General Pay Increase (5 U.S.C. 5303). This situation (a reduction in band level with no reduction in pay) will not be considered an adverse action, nor will band retention provisions apply.

14. Reverse Feedback

Employee feedback to supervisors is considered essential for the success of the Pay for Performance System. A feedback instrument for subordinates to anonymously evaluate the effectiveness of their supervisors is being developed and shall be implemented as part of the demonstration project. Supervisors and their managers will be provided the results of that feedback in a format that does not identify individual raters or ratings. The data will be aggregated into a summary and used to establish both personal and organizational performance development goals. The use of this type of instrument will help focus attention on desired leadership behaviors, structure the feedback in a constructive manner, and offset the power imbalance that often prevents supervisors from getting useful feedback from their employees.

15. Grievances and Disciplinary Actions

An employee may grieve the performance rating /score received under the PFP system. Non-bargaining unit employees, and bargaining unit employees covered by a negotiated grievance procedure that does not permit grievances over performance ratings, must file under administrative grievance procedures. Bargaining unit employees whose negotiated grievance procedures cover performance-rating grievances must file under those negotiated procedures.

Except where specifically waived or modified in this plan, adverse action procedures under 5 CFR part 752 remain unchanged.

D. Hiring Authority

1. Qualifications

The qualifications required for placement into a position in a pay band within an occupational family will be determined using the OPM Operating Manual for Qualification Standards for General Schedule (GS) Positions. Since the pay bands are anchored to the GS grade levels, the minimum qualification requirements for a position will be the requirements corresponding to the lowest GS grade incorporated into that pay band. For example, for a position in the E&S occupational family, Pay Band II individuals must meet the basic requirements for a GS–5 as specified in the qualification standard for Professional and Scientific Positions.

Selective factors may be established for a position in accordance with the OPM Qualification Standards Operating Manual, when determined to be critical to successful job performance. These factors will become part of the minimum requirements for the position, and applicants must meet them in order to be eligible. If used, selective factors will be stated as part of the qualification requirements in vacancy announcements and recruiting bulletins.

2. Delegated Examining

Competitive service positions with the CECOM RDE Demonstration Project will be filled through Merit Staffing or under Delegated Examining. The ''Rule of Three'' will be eliminated. When there are no more than 15 qualified applicants and no preference eligibles, all eligible applicants are immediately referred to the selecting official without rating and ranking. Rating and ranking will be required only when the number of qualified candidates exceeds 15 or there is a mix of preference and non-preference applicants. Statutes and regulations covering veterans' preference will be observed in the selection process and when rating and ranking are required. If the candidates are rated and ranked, a random number selection method using the application control number will be used to determine which applicants will be referred when scores are tied after the rating process. Veterans will be referred ahead of non-veterans with the same score.

3. Legal Authority

For actions taken under the auspices of the Demonstration Project, the legal authority, Public Law 103–337 will be used. For all other actions, the CECOM RDE organizations will continue to use the nature of action codes and legal authority codes prescribed by OPM, DoD, or DA.

4. Revisions to Term Appointments

The CECOM RDE organizations conduct a variety of projects that range from three to six years. The current four-year limitation on term appointments often forces the termination of term employees prior to completion of projects they were hired to support. This disrupts the research and development process and affects the organization's ability to accomplish the mission and serve its customers.

CECOM RDE organizations will continue to have career and career conditional appointments and temporary appointments not to exceed one year. These appointments will use existing authorities and entitlements. Under the demonstration project, CECOM RDE organizations will have the added authority to hire individuals under a modified term appointment. These appointments will be used to fill positions for a period of more than one year, but not more than a total of five years when the need for an employee's services is not permanent. The modified term appointments differ from term employment as described in 5 CFR part 316 in that they may be made for a period not to exceed five, rather than four years. RDE Directors are authorized to extend a term appointment one additional year.

Employees hired under the modified term appointment authority are in a non-permanent status, but may be eligible for conversion to career-conditional appointments. To be converted, the employee must (1) have been selected for the term position under competitive procedures, with the announcement specifically stating that the individual(s) selected for the term position may be eligible for conversion to a career-conditional appointment at a later date; (2) have served two years of continuous service in the term position; (3) be selected under merit promotion procedures for the permanent position; and (4) be performing at the acceptable level of performance with a current score of 30 or greater.

Employees serving under regular term appointments at the time of conversion to the demonstration project will be converted to the new modified term appointments provided they were hired for their current positions under competitive procedures. These employees will be eligible for conversion to career-conditional appointments if they (1) have served two years of continuous service in the term position; (2) are selected under merit promotion procedures for the permanent position; and (3) are performing at the acceptable level of performance with a current score of 30 or greater (or equivalent if not yet rated under the demonstration project). Time served in term positions prior to conversion to the modified term appointment is creditable, provided the service was continuous. Employees serving under modified term appointments under this plan will be covered by the plan's pay for performance system.

5. Extended Probationary Period

The current one year probationary period will be extended to three years for all newly hired permanent career-conditional employees in the Engineering and Science occupational family. The purpose of extending the probationary period is to allow supervisors an adequate period of time to fully evaluate an employee's ability to complete a cycle of work and to fully assess an employee's contribution and conduct. The three-year probationary period will apply only to new hires subject to a probationary period.

If a probationary employee's performance is determined to be satisfactory at a point prior to the end of the three year probationary period, a supervisor has the option of ending the probationary period at an earlier date, but not before the employee has completed one year of continuous service. If the probationary period is terminated before the end of the three-year period, the immediate supervisor will provide written reasons for his/her decision to the next level of supervision for concurrence prior to implementing the action.

Aside from extending the time period for all newly hired permanent career-conditional employees in the Engineering and Science occupational family, all other features of the current probationary period are retained including the potential to remove an employee without providing the full substantive and procedural rights afforded a non-probationary employee. Any employee appointed prior to the implementation date will not be affected.

6. Termination of Probationary Employees

Probationary employees may be terminated when they fail to demonstrate proper conduct, technical competency, and/or acceptable performance for continued employment, and for conditions arising before employment. When a supervisor decides to terminate an employee during the probationary period because his/her work performance or conduct is unacceptable, the supervisor shall terminate the employee's services by written notification stating the reasons for termination and the effective date of the action. The information in the notice shall, at a minimum, consist of the supervisor's conclusions as to the inadequacies of his/her performance or conduct, or those conditions arising before employment that support the termination.

7. Supervisory Probationary Periods

Supervisory probationary periods will be made consistent with 5 CFR 315. Employees who have successfully completed the initial probationary period will be required to complete an additional one-year probationary period for initial appointment to a supervisory position. If, during this probationary period, the decision is made to return the employee to a non-supervisory position for reasons related to supervisory performance, the employee will be returned to a comparable position of no lower pay than the position from which they were promoted or reassigned.

8. Volunteer Emeritus Corps

Under the demonstration project, RDE Directors will have the authority to offer retired or separated employees voluntary positions. Voluntary Emeritus Corps assignments are not considered employment by the Federal government (except for purposes of injury compensation). Thus, such assignments do not affect an employee's entitlement to buyouts or severance payments based on an earlier separation from Federal service.

The Voluntary Emeritus Corps will ensure continued quality services while reducing the overall salary line by allowing higher paid employees to accept retirement incentives with the opportunity to retain a presence in the RDE community. The program will be beneficial during manpower reductions, as employees accept retirement and return to provide a continuing source of corporate knowledge and valuable on-the-job training or mentoring to less experienced employees.

To be accepted into the emeritus corps, a volunteer must be recommended by an RDE manager to a directorate director. Not everyone who applies is entitled to an emeritus position. The responsible director must document acceptance or rejection of the applicant. For acceptance, documentation must be retained throughout the assignment. For rejection, documentation will be maintained for two years.

To ensure success and encourage participation, the volunteer's federal retirement pay (whether military or civilian) will not be affected while serving in a voluntary capacity. Retired or separated federal employees may accept an emeritus position without a break or mandatory waiting period.

Voluntary Emeritus Corps volunteers will not be permitted to monitor contracts on behalf of the Government or to participate on any contracts or solicitations where a conflict of interest exists. The volunteers may be required to submit a financial disclosure form annually. The same rules that currently apply to source selection members will apply to volunteers.

An agreement will be established between the volunteer, the responsible director, and the Civilian Personnel Operations Center (CPOC). The agreement must be finalized before the assumption of duties and shall include:

(a) A statement that the voluntary assignment does not constitute an appointment in the Civil Service, is without compensation, and the volunteer waives any claims against the Government based on the voluntary assignment;

(b) A statement that the volunteer will be considered a federal employee only for the purpose of injury compensation;

(c) The volunteer's work schedule;

(d) Length of agreement (defined by length of project or time defined by weeks, months, or years);

(e) Support provided by the organization (travel, administrative support, office space, and supplies);

(f) A statement of duties;

(g) A statement providing that no additional time will be added to a volunteer's service credit for such purposes as retirement, severance pay, and leave as a result of being a volunteer;

(h) A provision allowing either party to void the agreement with 2 working days written notice;

(i) The level of security access required by the volunteer (any security clearance required by the position will be managed by the employing organization);

(j) A provision that any publication(s) resulting from his/her work will be submitted to the RDE Center Directors for review and approval;

(k) A statement that he/she accepts accountability for loss or damage to Government property occasioned by his/her negligence or willful action;

(l) A statement that his/her activities on the premises will conform to the regulations and requirements of the organization;

(m) A statement that he/she will not release any sensitive or proprietary information without the written approval of the employing organization and further agrees to execute additional non-disclosure agreements as appropriate, if required, by the nature of the anticipated services; and,

(n) A statement that he/she agrees to disclose any inventions made in the course of work performed at the RDEC/SEC. The RDE Center Directors have the option to obtain title to any such invention on behalf of the U.S. Government. Should the RDE Center Directors elect not to take title, the RDE Centers shall at a minimum retain a non-exclusive, irrevocable, paid up, royalty-free license to practice or have practiced the invention worldwide on behalf of the U.S. Government.

Exceptions to the provisions in this procedure may be granted by the RDE Center Directors on a case-by-case basis.

E. Internal Placement and Pay Setting

1. Promotions

A promotion is the movement of an employee to a higher pay band in the same occupational family or to another pay band in a different occupational family, wherein the band in the new family has a higher maximum salary than the band from which the employee is moving. The move from one band to another must result in an increase in the employee's salary to be considered a promotion. Positions with known promotion potential to a specific band within an occupational family will be identified when they are filled. Not all positions in an occupational family will have promotion potential to the same band. Movement from one occupational family to another will depend upon individual knowledge, skills, and abilities, qualifications and needs of the organization. Supervisors may consider promoting employees at any time, since promotions are not tied to the pay for performance system. Progression within a pay band is based upon performance pay increases; as such, these actions are not considered promotions and are not subject to the provisions of this section. Except as specified below, promotions will be processed under competitive procedures in accordance with merit principles and requirements and the local merit promotion plan.

To be promoted competitively or non-competitively from one band to the next, an employee must meet the minimum qualifications for the job and have a current performance rating of ''acceptable'' with a score of 30 or better, or equivalent under a different performance appraisal system. If an employee does not have a current performance rating, the employee will be treated the same as an employee with an ''acceptable'' rating as long as there is no documented evidence of unacceptable performance.

The following actions are excepted from competitive procedures:

(a) Re-promotion to a position which is in the same pay band or GS equivalent and occupational family as the employee previously held on a permanent basis within the competitive service.

(b) Promotion, reassignment, demotion, transfer or reinstatement to a position having promotion potential no greater than the potential of a position an employee currently holds or previously held on a permanent basis in the competitive service.

(c) A position change permitted by reduction in force procedures.

(d) Promotion without current competition when the employee was appointed through competitive procedures to a position with a documented career ladder.

(e) A temporary promotion, or detail to a position in a higher pay band, of 180 days or less.

(f) A promotion due to the reclassification of positions based on accretion (addition) of duties.

(g) A promotion resulting from the correction of an initial classification error or the issuance of a new classification standard.

(h) Consideration of a candidate who did not receive proper consideration in a competitive promotion action.

(i) Impact of person in the job and Factor IV process (application of the Research Grade-Evaluation Guide, Equipment Development Grade-Evaluation Guide, Part III, or similar guides) promotions.

2. Supervisory and Team Leader Pay Adjustments

Supervisory and team leader pay adjustments may be approved by the RDE Center Directors based on the recommendation of the Personnel Management Board at the Center level to compensate employees with supervisory or team leader responsibilities. Only

employees in supervisory or team leader positions as defined by the OPM GS Supervisory Guide or GS Leader Grade-Evaluation Guide may be considered for the pay adjustment. These pay adjustments are funded separately from Performance Pay Pools. These pay adjustments are increases to the basic rate of pay, ranging up to 10 percent of that pay rate for supervisors and up to 5 percent of that pay rate for team leaders. Pay adjustments are subject to the constraint that the adjustment may not cause the employee's basic rate of pay to exceed the pay band maximum rate. Criteria to be considered in determining the pay increase percentage include: (1) Needs of the organization to attract, retain, and motivate high quality supervisors/team leaders; (2) budgetary constraints; (3) years and quality of related experience; (4) relevant training; (5) performance appraisals and experience as a supervisor/team leader; (6) organizational level of position; and (7) impact on the organization. The pay adjustment will not apply to employees in Pay Band V of the E&S Occupational Family.

After the date of conversion into the demonstration project, a pay adjustment may be considered under the following conditions:

(1) New hires into supervisory/team leader positions will have their initial rate of base pay set at the supervisor's discretion within the pay range of the applicable pay band. This rate of pay may include a pay adjustment determined by using the ranges and criteria outlined above.

(2) A career employee selected for a supervisory/team leader position that is within the employee's current pay band may also be considered for a pay adjustment. If a supervisor/team leader is already authorized a pay adjustment and is subsequently selected for another supervisor/team leader position within the same pay band, then the pay adjustment will be re-determined.

Upon initial conversion into the demonstration project into the same or substantially similar position, supervisors/team leaders will be converted at their existing basic rate of pay and will not be eligible for a pay adjustment.

The supervisor/team leader pay adjustment will be reviewed annually, with possible increases or decreases based on the appraisal scores for the performance elements Team/Project Leadership and Supervision/EEO. The initial dollar amount of a pay adjustment will be removed when the employee voluntarily leaves the position. The cancellation of the adjustment under these circumstances is not an adverse action and is not subject to appeal. If an employee is removed from a supervisory/team leader position for personal cause (performance or conduct), the adjustment will be removed under adverse action procedures. However, if an employee is removed from a non-probationary supervisory/team leader position for conditions other than voluntary or for personal cause, then grade and pay retention will follow current law and regulations at 5 U.S.C. 5362, 5363, and 5 CFR part 536, except as waived or modified in section IX.

3. Supervisory/Team Leader Pay Differentials

Supervisory and team leader pay differentials may be used by RDE Center Directors to provide an incentive and reward supervisors and team leaders as defined by the OPM GS Supervisory Guide and GS Leader Grade-Evaluation Guide. Pay differentials are not funded from Performance Pay Pools. A pay differential is a cash incentive that may range up to 10 percent of base pay for supervisors and up to 5 percent of base pay for team leaders. It is paid on a pay period basis with a specified not-to-exceed (NTE) of one year or less and is not included as part of the base pay. Criteria to be considered in determining the amount of the pay differential are the same as those identified for Supervisory/Team Leader Pay Adjustments. The pay differential will not apply to employees in Pay Band V of the E&S occupational family.

The pay differential may be considered, either during conversion into or after initiation of the demonstration project, if the supervisor/team leader has subordinate employees in the same pay band. The differential must be terminated if the employee is removed from a supervisory/team leader position, regardless of cause.

After initiation of the demonstration project, all personnel actions involving a supervisory/team leader differential will require a statement signed by the employee acknowledging that the differential may be terminated or reduced at the discretion of the RDE Center Directors. The termination or reduction of the differential is not an adverse action and is not subject to appeal.

4. Pay Administration

Pay administration policies will be established by the RDE Personnel Management Board, which conform to basic governmental pay fixing policy; however, these policies will be exempt from Army Regulations or CECOM local pay fixing policies. Upon initial appointment, the individual's pay may be set anywhere within the band level consistent with the special qualifications of the individual and the unique requirements of the position. These special qualifications may be in the form of education, training, experience, or any combination thereof that is pertinent to the position in which the employee is being placed. Guidance on hiring salaries will be established by the RDE Personnel Management Board.

CECOM RDE organizations may make full use of recruitment, retention and relocation payments as currently provided for by OPM.

Highest Previous Rate (HPR) will be considered in placement actions authorized under rules similar to the HPR rules in 5 CFR 531.203 (c) and (d). Use of HPR will be at the supervisor's discretion, but if used, HPR is subject to policies established by the RDE Personnel Management Board. Pay band and pay retention will follow current law and regulations at 5 U.S.C. 5362, 5363, and 5 CFR part 536, except as waived or modified in section IX, the waiver section of this plan. RDE Center Directors may also grant pay retention to employees who meet general eligibility requirements, but do not have specific entitlement by law, provided they are not specifically excluded.

5. Pay and Compensation Ceilings

An employee's total monetary compensation paid in a calendar year may not exceed the basic pay of level I of the Executive Schedule consistent with 5 U.S.C. 5307 and 5 CFR part 530 subpart B. In addition, each pay band will have its own pay ceiling, just as grades do in the current system. Pay rates for the various pay bands will be directly keyed to the GS rates, except the maximum range for Pay Band V of the Engineer and Scientist occupational family, which cannot exceed ES–4. Basic pay will be limited to the maximum rates payable for each pay band, except for retained rates.

6. Pay Setting for Promotion

The minimum basic pay increase upon promotion to a higher pay band will be 6 percent or the minimum rate of the new pay band, whichever is greater. The maximum amount of pay increases will not exceed $10,000, or other such amount as established by the RDE Personnel Management Board. However, for employees assigned to occupational categories and geographic areas covered by special rates, the minimum salary rate in the pay band to which promoted is the minimum salary for the corresponding special rate or locality rate, whichever is greater. For

employees covered by a staffing supplement, the demonstration staffing adjusted pay is considered basic pay for promotion calculations. When a temporary promotion is terminated, the employee's pay entitlements will be re-determined based on the employee's position of record, with appropriate adjustments to reflect pay events during the temporary promotion, subject to the specific policies and rules established by the RDE Personnel Management Board. In no case may those adjustments increase the pay for the position of record beyond the applicable pay range maximum rate.

7. Pay Setting for Demotion or Placement in a Lower Pay Band

A demotion is a placement into a lower pay band within the same occupational family or placement into a pay band in a different occupational family with a lower salary. Demotions may be for cause (performance or conduct) or for reasons other than cause (e.g., erosion of duties, reclassification of duties to a lower pay band, application under competitive announcements or at the employee's request, or placement actions resulting from RIF procedures). Employees demoted for cause are not entitled to pay retention. Employees demoted for reasons other than cause may be entitled to pay retention in accordance with the provisions of 5 U.S.C. 5363 and 5 CFR part 536, except as waived or modified in section IX of this plan.

Employees who receive an unacceptable rating or who are on a performance improvement plan at the time pay determinations are made, do not receive performance payouts or the general pay increase. This action may result in a base salary that is identified in a lower pay band. This occurs because the minimum rate of basic pay in a pay band increases as the result of the General Pay Increase (5 U.S.C. 5303). This situation (a reduction in band level with no reduction in pay) will not be considered an adverse performance based action, nor will band retention provisions apply.

8. Staffing Supplements

Employees assigned to occupational categories and geographic areas covered by special rates will be entitled to a staffing supplement if the maximum adjusted rate for the banded GS grades to which assigned is a special rate that exceeds the maximum GS locality rate for the banded grades. The staffing supplement is added to the base pay, much like locality rates are added to base pay. For employees being converted into the demonstration project, total pay immediately after conversion will be the same as immediately before, but a portion of the total pay will be in the form of a staffing supplement. Adverse action and pay retention provisions will not apply to the conversion process, as there will be no change in total salary.

The staffing supplement is calculated as follows. Upon conversion, the demonstration base rate will be established by dividing the employee's former GS adjusted rate (the higher of special rate or locality rate) by the staffing factor. The staffing factor will be determined by dividing the maximum special rate for the banded grades by the GS unadjusted rate corresponding to that special rate (step 10 of the GS rate for the same grade as the special rate). The employee's demonstration staffing supplement is derived by multiplying the demonstration base rate by the staffing factor minus one. Therefore, the employee's final demonstration special staffing rate equals the demonstration base rate plus the staffing supplement. This amount will equal the employee's former GS adjusted rate. Simplified, the formula is this:

$$\text{Staffing factor} = \frac{\text{Maximum Special Rate for the banded grades}}{\text{GS unadjusted rate corresponding to that special rate}}$$

$$\text{Demonstration base rate} = \frac{\text{Former GS adjusted rate (special or locality rate)}}{\text{Staffing factor}}$$

$$\text{Staffing Supplement} = \text{Demonstration base rate} \times (\text{Staffing factor} - 1)$$

$$\text{Salary upon conversion} = \text{Demonstration base rate} + \text{Staffing supplement (sum will equal existing rate)}$$

Example: Assume there is a GS–854–11, step 03 employee assigned to Fort Monmouth, NJ, who is entitled to the greater of a special salary rate of $53,648 or a locality rate of $48,763 ($42,918+13.62 percent). The maximum special rate for a GS–854–11, step 10 is $65,381, and the corresponding regular rate is $52,305. The maximum GS–11 locality rate in Fort Monmouth is $59,429 ($52,305+13.62 percent), which is less than the maximum special salary rate. Thus, a staffing supplement is payable. The staffing factor is computed as follows:

Staffing factor = $65,381/$52,305 = 1.2500

Demonstration base rate = $53,648/1.2500 = $42,918

Then to determine the staffing supplement, multiply the demonstration base by the staffing factor minus 1.

Staffing supplement = $42,918 × 0.2500 = $10,730

The staffing supplement of $10,730 is added to the demonstration base rate of $42,918, and the total salary is $53,648, which is the salary of the employee before conversion.

If an employee is in a band where the maximum GS adjusted rate for the banded grades is a locality rate, when the employee enters into the demonstration project, the demonstration base rate is derived by dividing the employee's former GS adjusted rate (the higher of locality rate or special rate) by the applicable locality pay factor. The employee's demonstration locality-adjusted rate will equal the employee's former GS adjusted rate. Any GS or special rate schedule adjustment will require computing the staffing supplement again. Employees receiving a staffing supplement remain entitled to an underlying locality rate, which may over time supersede the need for a staffing supplement. If OPM discontinues or decreases a special rate schedule, pay retention provisions will be applied. Upon geographic movement, an employee who receives the staffing supplement will have the supplement recomputed. Any resulting reduction in pay will not be considered an adverse action or a basis for pay retention.

The calculation of a staffing supplement as previously illustrated was presented in the context of a GS employee entering the demonstration project. Application of the staffing supplement is normally intended to maintain pay comparability for GS employees entering the demonstration. However, the staffing supplement formulas must be compatible with non-Government employees entering the demonstration and also be adaptable to the special circumstances of employees already in the demonstration. The following principles will govern the modifications necessary to the previous

staffing supplement calculations to apply the staffing supplement to circumstances other than a GS employee entering the demonstration project. No adjustment under these provisions will provide an increase greater than that provided by the special salary rate. An increase provided under this authority is not an equivalent increase, as defined by 5 CFR 531.403. These principles are stated with the understanding that the necessary conditions exist that require the application of a staffing supplement.

1. If a non-Government employee is hired into the demonstration, then the employee's entry salary will be used for the term, ''former GS adjusted rate'' to calculate the demonstration base rate.

2. If a current employee is covered by a new or modified special salary rate table, then the employee's current demonstration base rate is used to calculate the staffing supplement percentage. The employee's new demonstration adjusted base salary is the sum of the current demonstration base rate and the calculated staffing supplement.

3. If a current employee is in an occupational category that is covered by a special salary rate table and subsequently, the occupational category becomes covered by a different special salary rate table with a higher value (e.g., a DB 854 originally covered by table 422 is subsequently covered by table 999E, which is a higher rate schedule), then the following steps must be applied to calculate a new demonstration base rate:

Step 1. To obtain a relevance factor, divide the staffing factor that will become applicable to the employee by the staffing factor that would have applied to the employee. For example, table 999E (Special Salary Rate Table for Certain Information Technology employees, containing 2001 rates for New Jersey) is applicable to a DB 854–II employee, and the applicable staffing factor is 1.25 ($65,381 /$52,305). For table 0422 (the table that would have applied if table 999E had not been implemented), the applicable staffing factor is 1.1281 ($59,010/$52,305). Thus:

Relevance factor = 1.25 / 1.281 = 1.108

Step 2. Multiply the relevance factor resulting from step 1 by the employee's current adjusted demonstration rate to determine a new adjusted demonstration rate.

Step 3. Divide the result from step 2 by the applicable staffing factor to derive a new demonstration base rate. This new demonstration base rate will be used to calculate the staffing supplement and the new demonstration adjusted base salary.

4. If, after the establishment of a new or adjusted special salary rate table, an employee enters the demonstration (whether converted from GS or hired from outside Government) prior to this intervention, then the employee's current adjusted base salary is used for the term ''former GS adjusted rate'' to calculate the demonstration base rate. This principle prevents double compensation due to the single event of a new or adjusted special salary rate table.

5. If an employee is in an occupational category covered by a new or modified special salary rate table, and the pay band to which assigned is not entitled to a staffing supplement, then the employee's salary may be reviewed and adjusted to accommodate the salary increase provided by the special salary rate. The review may result in a one-time pay increase if the employee's salary equals or is less than the highest special salary grade and step that exceeds the comparable locality grade and step. Demonstration project operating procedures will identify the officials responsible to make such reviews and determinations. The applicable salary increase will be calculated by determining the percentage difference between the highest step 10 special salary rate and the comparable step 10 locality rate and applying this percentage to the demonstration base rate.

An established salary including the staffing supplement will be considered basic pay for the same purposes as a locality rate under 5 CFR 531.606(b), i.e., for purposes of retirement, life insurance, premium pay, severance pay, and advances in pay. It will also be used to compute worker's compensation payments and lump-sum payments for accrued and accumulated annual leave.

9. Simplified Assignment Process

Today's environment of downsizing and workforce fluctuations mandates that the organization have maximum flexibility to assign duties and responsibilities to individuals. Pay banding can be used to address this need, as it enables the organization to have maximum flexibility to assign an employee with no change in basic pay, within broad descriptions, consistent with the needs of the organization and the individual's qualifications and level. Subsequent assignments to projects, tasks, or functions anywhere within the organization requiring the same level, area of expertise, and qualifications would not constitute an assignment outside the scope or coverage of the current position description. For instance, a technical expert could be assigned to any project, task, or function requiring similar technical expertise. Likewise, a manager could be assigned to manage any similar function or organization consistent with that individual's qualifications. This flexibility allows broader latitude in assignments and further streamlines the administrative process and system.

10. Details

Under this plan employees may be detailed to a position in the same band (requiring a different level of expertise and qualifications) or lower pay band (or its equivalent in a different occupational family) for up to one year. Details may be implemented through an official personnel action to cover the one-year period. Details to a position in a higher pay band up to 180 days will be made non-competitively. Beyond 180 days requires competitive procedures.

F. Employee Development

1. Expanded Developmental Opportunity Program

The Expanded Developmental Opportunity Program will be available to all demonstration project employees. Expanded developmental opportunities complement existing developmental opportunities such as long-term training, rotational job assignments, developmental assignments to AMC/Army/DoD, and self-directed study via correspondence courses and local colleges and universities. Each developmental opportunity must result in a product, service, report or study that will benefit the RDE or customer organization as well as increase the employee's individual effectiveness. The developmental opportunity period will not result in loss of (or reduction) in basic pay, leave to which the employee is otherwise entitled, or credit for service time. The positions of employees on expanded developmental opportunities may be back-filled (i.e., with temporarily assigned, detailed or promoted employees or with term employees). However, that position or its equivalent must be made available to the employee upon return from the developmental period. The RDE Personnel Management Board will provide written guidance for employees on application procedures and develop a process that will be used to review and evaluate applicants for development opportunities.

a. Sabbaticals. RDE Center Directors will have the authority to grant paid or unpaid sabbaticals to all career employees. The purpose of a sabbatical

will be to permit employees to engage in study or uncompensated work experience that will benefit the organization and contribute to the employee's development and effectiveness. Each sabbatical must result in a product, service, report, or study that will benefit the CECOM RDE mission as well as increase the employee's individual effectiveness. Various learning or developmental experiences may be considered, such as advanced academic teaching; study; research; self-directed or guided study; and on-the-job work experience with public, private, commercial, or private non-profit organizations.

Paid sabbaticals of up to 12 months in duration and unpaid sabbaticals of up to 6 months in a calendar year may be granted to an employee in any 7-year period. Employees will be eligible to request a sabbatical after completion of seven years of Federal service. Employees approved for a paid sabbatical must sign a service obligation agreement to continue in service in the CECOM RDE for a period of three times the length of the sabbatical. If an employee voluntarily leaves the CECOM RDE organization before the service obligation is completed he/she is liable for repayment of expenses associated with training during the sabbatical such as, registration fees, tuition and matriculation fees, library and laboratory fees, purchase or rental of books, materials, supplies, travel, per diem, and miscellaneous other related training program costs. Expenses do not include salary costs. The RDE Center Directors have the authority to waive this requirement.

Specific procedures will be developed for processing sabbatical applications upon implementation of the demonstration project.

b. Critical Skills Training (Training for Degrees). Training is an essential component of an organization that requires continuous acquisition of advanced and specialized knowledge. Degree training is also a critical tool for recruiting and retaining employees with or requiring critical skills. Until 2000, 5 U.S.C. 4107 limited degree payment to those employees in shortage occupations with a recruitment or retention problem. Degree payment was not permitted for non-shortage occupations involving critical skills. In section 1121 of the National Defense Authorization Act for FY 01, the Congress approved legislation sought by DoD to link degree payment to programs of systematic professional development, dropping the shortage occupation constraint. This demonstration project exempts CECOM from both conditions—linkage to professional development programs or to a shortage occupation.

The CECOM RDE organizations are expanding the authority to provide degree or certificate payment for non-shortage occupations for purposes of meeting critical skill requirements. This will ensure continuous acquisition of advanced specialized knowledge essential to the organization, and enhance our ability to recruit and retain personnel critical to the present and future requirements of the organization. Degree or certificate payment may not be authorized where it would result in a tax liability for the employee without the employee's express and written consent. Any variance from this policy must be rigorously determined and documented. Guidelines will be developed to ensure competitive approval of degree or certificate payment and that such decisions are fully documented. Employees approved for degree training must sign a service obligation agreement to continue in service in a CECOM RDE organization for a period of three times the length of the training period. If an employee voluntarily leaves the CECOM RDE organization before the service obligation is completed, the employee is liable for repayment. The repayment amount will be based on the additional expenses or direct costs of the training, such as registration fees; tuition and matriculation fees; library and laboratory fees; purchase or rental of books, materials, and supplies; travel and per diem; and miscellaneous other related training program costs. The RDE Center Directors have the authority to waive this requirement.

G. Reduction-in-Force (RIF) Procedures

RIF procedures will be used when a CECOM RDE employee faces separation or downgrading due to lack of work, shortage of funds, reorganization, insufficient personnel ceiling, the exercise of re-employment or restoration rights, or furlough for more than 30 calendar days or more than 22 discontinuous days. The procedures in 5 CFR 351 will be followed with slight modifications pertaining to the competitive areas, assignment rights, the calculation of adjusted service computation date and grade/pay band retention. Modified term appointment employees are in Tenure Group III for RIF purposes. RIF procedures are not required when separating these employees when their appointments expire.

1. Competitive Areas

Separate competitive areas for RIF purposes will be established at each geographic location. Separate RIF competitive areas for demo and non-demo employees will be established at each geographic location. Bumps and retreats will occur only within the same competitive area and only to positions for which the employee meets all qualification standards including medical and/or physical qualifications.

Within each competitive area, competitive levels will be established based on the occupational family, pay band and series which are similar enough in duties and qualifications that employees can perform the duties and responsibilities of any other position in the competitive level upon assignment to it, without any loss of productivity beyond what is normally expected.

2. Assignment Rights

An employee may displace another employee by bump or retreat to one band below the employee's existing band. A preference eligible with a compensable service-connected disability of 30 percent or more may retreat to positions two bands (or equivalent to five grades) below his/her current band.

3. Crediting Performance in Reductions in Force (RIF)

Reductions in force are accomplished using the existing procedures with the retention factors of: tenure, veteran's preference and length of service as adjusted by performance ratings, in that order. However, the additional RIF service credit for performance will be based on the last three total performance scores during the preceding 4 years and will be applied as follows:

Total Performance Scores = Years of Service Credit

48 − 50 = 10
45 − 47 = 9
42 − 44 = 8
39 − 41 = 7
36 − 38 = 6
33 − 35 = 5
30 − 32 = 4
27 − 29 = 3
24 − 26 = 2
20 − 23 = 1

A score of below 20 adds no credit for RIF retention. (Note: The additional years of service credit are added, not averaged. Ratings given under non-demonstration systems will be converted to the demonstration-rating scheme and provided the equivalent rating credit.)

Employees who have been rated under different patterns of summary

rating levels will receive RIF appraisal credit based on the following:

If there are any ratings to be credited for the RIF given under a rating system, which includes one or more levels above fully successful (Level 3), employee will receive:

10 years for Level 5
7 years for Level 4
3 years for Level 3

If an employee comes from a system with no levels above Fully Successful (Level 3), they will receive credit based on the demonstration project's modal score for the employee's competitive area.

In some cases, an employee may not have three (3) ratings of record. If an employee has less than three annual ratings of record, then for each missing rating, an average of the scores received for the past four years will be used. When the score is calculated to be a decimal, it should be rounded to the next higher whole number using the method described in paragraph III.C.4. For an employee who has no ratings of record, all credit will be based on the repeated use of a single modal rating from the most recently completed appraisal period on record.

An employee who has received a written decision that their performance is unacceptable has no bump or retreat rights. Employees who have been demoted for unacceptable performance, and as of the date of the issuance of the RIF notice have not received a performance rating in the position to which demoted, will receive the same additional retention service credit granted for a level 3 rating of record. An employee who has received an acceptable rating following a PIP will have that rating considered as the current rating of record.

An employee with a current unacceptable rating of record has assignment rights only to a position held by another employee who has an unacceptable rating of record.

4. Pay Band and Pay Retention

Pay band and pay retention will follow current law and regulations at 5 U.S.C. 5362, 5363, and 5 CFR part 536, except as waived or modified in section IX of this plan.

IV. Implementation Training

Critical to the success of the demonstration project is the training developed to ensure understanding of the broad concepts and finer details needed to implement and successfully execute this project. Pay banding, a new job classification and performance management system all represent a significant cultural change to the organization. Training will be tailored to fit the requirements of every employee and will fully address employee concerns to ensure a comprehensive understanding of the program. Training will be required both prior to implementation and at various times during the life of the demo.

A training program will begin prior to implementation and will include modules tailored for employees, supervisors, senior managers, and administrative staff. Typical modules are:

An Overview of the Personnel System
How Employees Are Converted into and out of the System
Pay Banding
The Pay for Performance System
Defining Performance Objectives
How to Assign Weights
Assessing Performance—Giving Feedback
New Position Descriptions
Demonstration Project Administration and Formal Evaluation

Various types of training are being considered, including videos, on-line tutorials, and train the trainer concepts.

V. Conversion

A. Conversion to the Demonstration Project

Initial entry into the demonstration project will be accomplished through a full employee-protection approach that ensures each employee an initial place in the appropriate pay band without loss of pay. Employees serving under regular term appointments at the time of the implementation of the demonstration project will be converted to the modified term appointment if all requirements in III.D.4. (Revisions to Term Appointments) have been satisfied. Position announcements, etc., will not be required for these term appointments.

Conversion from current GS/GM grade and pay into the new pay band system will be accomplished upon implementation of the demonstration project. Each employee's initial total salary under the demonstration project will equal the total salary received immediately before conversion. Special conversion rules apply to special salary rate employees, which are described in III.E.8. (Staffing Supplements). Employees who enter the demonstration project later by lateral transfer, reassignment or realignment will be subject to the same pay conversion rules. If conversion into the demonstration project is accompanied by a geographic move, the employee's GS pay entitlements in the new geographic area must be determined before performing the pay conversion.

Employees who are covered by special salary rates prior to entering the demonstration project will no longer be considered a special rate employee under the demonstration project. These employees will, therefore, be eligible for full locality pay or a staffing supplement. The adjusted salaries of these employees will not change. Rather, the employees will receive a new basic pay rate computed under the staffing supplement rules in section III. E. 8. Adverse action and pay retention provisions will not apply to the conversion process, as there will be no change in total salary.

Employees who are on temporary promotions at the time of conversion will be converted to a pay band commensurate with the grade of the position to which temporarily promoted. At the conclusion of the temporary promotion, the employee will revert to the grade or pay band that corresponds to the position of record. When a temporary promotion is terminated, pay will be determined based on the position of record, with appropriate adjustments to reflect pay events during the temporary promotion, subject to the specific policies and rules established by the CECOM RDE Personnel Management Board. In no case may those adjustments increase the pay for the position of record beyond the applicable pay range maximum rate. The only exception will be if the original competitive promotion announcement stipulated that the promotion could be made permanent; in these cases, actions to make the temporary promotion permanent will be considered, and if implemented, will be subject to all existing priority placement programs.

During the first 12 months following conversion, employees will receive pay increases for non-competitive promotion equivalents when the grade level of the promotion is encompassed within the same pay band, the employee's performance warrants the promotion and promotions would have otherwise occurred during that period. Employees who receive an in-level promotion at the time of conversion will not receive a prorated step increase equivalent as defined below.

Under the current pay structure, employees progress through their assigned grade in step increments. Since this system is being replaced under the demonstration project, employees will be awarded that portion of the next higher step they have completed up until the effective date of implementation. As under the current system, supervisors will be able to withhold these partial step increases if

the employee's performance is below an acceptable level of competence.

Rules governing WGIs under the current Army performance plan will continue in effect until the implementation date. Adjustments to the employee's base salary for WGI equity will be computed effective the date of implementation to coincide with the beginning of the first formal PFP assessment cycle. WGI equity will be acknowledged by increasing base salaries by a prorated share based upon the number of weeks an employee has completed toward the next higher step. Payment will equal the value of the employee's next WGI times the proportion of the waiting period completed (weeks completed in waiting period/weeks in the waiting period) at the time of conversion. Employees at step 10, or receiving retained rates, on the day of implementation will not be eligible for WGI equity adjustments since they are already at or above the top of the step scale. Employees serving on retained grade will receive WGI equity adjustments provided they are not at step 10 or receiving a retained rate.

Employees who enter the demonstration project after initial implementation by lateral transfer, reassignment, or realignment will be subject to the same pay conversion rules as above. Specifically, adjustments to the employee's base salary for a step increase and a non-competitive career ladder promotion will be computed as a prorated share of the current value of the step or promotion increase based upon the number of weeks an employee has completed toward the next higher step or grade at the time the employee moves into the project.

B. Conversion Out Of The Demonstration Project

If a demonstration project employee is moving to a GS position not under the demonstration project, or if the project ends and each project employee must be converted back to the GS system, the following procedures will be used to convert the employee's project pay band to a GS-equivalent grade and the employee's project rate of pay to the GS-equivalent rate of pay. The converted GS grade and GS rate of pay must be determined before movement or conversion out of the demonstration project and any accompanying geographic movement, promotion, or other simultaneous action. For conversions upon termination of the project and for lateral reassignments, the converted GS grade and rate will become the employee's actual GS grade and rate after leaving the demonstration project (before any other action). For transfers, promotions, and other actions, the converted GS grade and rate will be used in applying any GS pay administration rules applicable in connection with the employee's movement out of the project (e.g., promotion rules, highest previous rate rules, pay retention rules), as if the GS converted grade and rate were actually in effect immediately before the employee left the demonstration project.

1. Grade-Setting Provisions

An employee in a pay band corresponding to a single GS grade is converted to that grade. An employee in a pay band corresponding to two or more grades is converted to one of those grades according to the following rules:

(a) The employee's adjusted rate of basic pay under the demonstration project (including any locality payment or staffing supplement) is compared with step 4 rates in the highest applicable GS rate range. (For this purpose, a GS rate range includes a rate in (1) the GS base schedule, (2) the locality rate schedule for the locality pay area in which the position is located, or (3) the appropriate special rate schedule for the employee's occupational series, as applicable.) If the series is a two-grade interval series, only odd-numbered grades are considered below GS–11.

(b) If the employee's adjusted project rate equals or exceeds the applicable step 4 rate of the highest GS grade in the band, the employee is converted to that grade.

(c) If the employee's adjusted project rate is lower than the applicable step 4 rate of the highest grade, the adjusted rate is compared with the step 4 rate of the second highest grade in the employee's pay band. If the employee's adjusted rate equals or exceeds step 4 rate of the second highest grade, the employee is converted to that grade.

(d) This process is repeated for each successively lower grade in the band until a grade is found in which the employee's adjusted project rate equals or exceeds the applicable step 4 rate of the grade. The employee is then converted at that grade. If the employee's adjusted rate is below the step 4 rate of the lowest grade in the band, the employee is converted to the lowest grade.

(e) Exception: If the employee's adjusted project rate exceeds the maximum rate of the grade assigned under the above-described step 4 rule but fits in the rate range for the next higher applicable grade (i.e., between step 1 and step 4), then the employee shall be converted to that next higher applicable grade.

(f) Exception: An employee will not be converted to a lower grade than the grade held by the employee immediately preceding a conversion, lateral reassignment, or lateral transfer into the project, unless since that time the employee has undergone a reduction in band.

2. Pay-Setting Provisions

An employee's pay within the converted GS grade is set by converting the employee's demonstration project rates of pay to GS rates of pay in accordance with the following rules:

(a) The pay conversion is done before any geographic movement or other pay-related action that coincides with the employee's movement or conversion out of the demonstration project.

(b) An employee's adjusted rate of basic pay under the project (including any locality payment or staffing supplement) is converted to a GS-adjusted rate on the highest applicable GS rate range for the converted GS grade. (For this purpose, a GS rate range includes a rate range in (1) the GS base schedule, (2) an applicable locality rate schedule, or (3) an applicable special rate schedule.)

(c) If the highest applicable GS rate range is a locality pay rate range, the employee's adjusted project rate is converted to a GS locality rate of pay. If this rate falls between two steps in the locality-adjusted schedule, the rate must be set at the higher step. The converted GS unadjusted rate of basic pay would be the GS base rate corresponding to the converted GS locality rate (i.e., same step position). (If this employee is also covered by a special rate schedule as a GS employee, the converted special rate will be determined based on the GS step position. This underlying special rate will be basic pay for certain purposes for which the employee's higher locality rate is not basic pay.)

(d) If the highest applicable GS rate range is a special rate range, the employee's adjusted project rate is converted to a special rate. If this rate falls between two steps in the special rate schedule, the rate must be set at the higher step. The converted GS unadjusted rate of basic pay will be the GS rate corresponding to the converted special rate (i.e., same step position).

(e) E&S Pay Band V Employees: An employee in Pay Band V of the E&S Occupational Family will convert out of the demonstration project at the GS–15 level. Procedures will be developed to ensure that employees entering Pay Band V understand that if they leave the demonstration project and their

adjusted project pay exceeds the GS–15, Step 10 rate, there is no entitlement to retained pay. Their GS equivalent rate will be deemed to be the rate for GS–15, Step 10. For those Pay Band V employees paid below the adjusted GS–15, Step 10 rate, the converted rates will be set in accordance with paragraph b.

(f) Employees with Pay Retention: If an employee is receiving a retained rate under the demonstration project, the employee's GS-equivalent grade is the highest grade encompassed in his or her band level. Demonstration project operating procedures will outline the methodology for determining the GS-equivalent pay rate for an employee retaining a rate under the demonstration project.

3. Within Grade Increase—Equivalent Increase Determinations

Service under the demonstration project is creditable for within-grade increase purposes upon conversion back to the GS pay system. Performance pay increases (including a zero increase) under the demonstration project are equivalent increases for the purpose of determining the commencement of a within-grade increase waiting period under 5 CFR 531.405(b).

C. Personnel Administration

All personnel laws, regulations, and guidelines not waived by this plan will remain in effect. Basic employee rights will be safeguarded and merit principles will be maintained. Servicing CPOCs/CPACs will continue to process personnel-related actions and provide consultative and other appropriate services.

D. Automation

The CECOM RDE organizations will continue to use the Defense Civilian Personnel Data System (DCPDS) for the processing of personnel-related data. Payroll servicing will continue from the respective payroll offices.

Local automated systems will be developed to support computation of performance related pay increases and awards and other personnel processes and systems associated with this project.

E. Experimentation and Revision

Many aspects of a demonstration project are experimental. Modifications may be made from time to time as experience is gained, results are analyzed, and conclusions are reached on how the new system is working. The provisions of this project plan will not be modified, duplicated in organizations not listed in the project plan, or extended to individuals or groups of employees not included in the project plan without the approval of the Deputy Assistant Secretary of Defense (Civilian Personnel Policy). ODASD(CPP) will inform DA of requirements for notification to stakeholders, which may include Congress, employees, labor organizations, and the public. The extent of notification requirements will depend on the nature and extent of the requested project modification. As a minimum, however, major changes and modifications will be published in the **Federal Register**, subject to ODASD(CPP) approval.

VI. Project Duration

Public Law 103–337 removed any mandatory expiration date for this demonstration. CECOM, DA and DoD will ensure this project is evaluated for the first five years after implementation in accordance with 5 U.S.C. 4703. Modifications to the original evaluation plan or any new evaluation will ensure the project is evaluated for its effectiveness, its impact on mission and any potential adverse impact on any employee groups. Major changes and modifications to the interventions can be made through announcement in the **Federal Register** and would be made if formative evaluation data warranted. At the 5-year point, the demonstration will be reexamined for permanent implementation, modification and additional testing, or termination of the entire demonstration project.

VII. Evaluation Plan

A. Overview

Chapter 47 of 5 U.S.C. requires that an evaluation be performed to measure the effectiveness of the demonstration project, and its impact on improving public management. A comprehensive evaluation plan for the entire demonstration program, originally covering 24 DoD laboratories, was developed by a joint OPM/DoD Evaluation Committee in 1995. This plan was submitted to the Office of Defense Research & Engineering and was subsequently approved. The main purpose of the evaluation is to determine whether the waivers granted result in a more effective personnel system and improvements in ultimate outcomes (i.e. organizational effectiveness, mission accomplishment, and customer satisfaction).

B. Evaluation Model

Appendix D shows an intervention model for the evaluation of the demonstration project. The model is designated to evaluate two levels of organizational performance: intermediate and ultimate outcomes. The intermediate outcomes are defined as the results from specific personnel system changes and the associated waivers of law and regulation expected to improve human resource (HR) management (i.e. cost, quality, timeliness). The ultimate outcomes are determined through improved organizational performance, mission accomplishment, and customer satisfaction. Although it is not possible to establish a direct causal link between changes in the HR management system and organizational effectiveness, it is hypothesized that the new HR system will contribute to improved organizational effectiveness.

Organizational performance measures established by the organization will be used to evaluate the impact of a new HR system on the ultimate outcomes. The evaluation of the new HR system for any given organization will take into account the influence of three factors on organizational performance: context, degree of implementation, and support of implementation. The context factor refers to the impact which intervening variables (i.e., downsizing, changes in mission, or the economy) can have on the effectiveness of the program. The degree of implementation considers: (1) The extent to which the HR changes are given a fair trial period; (2) the extent to which the changes are implemented; and (3) the extent to which the changes conform to the HR interventions as planned. The support of implementation factor accounts for the impact that factors such as training, internal regulations and automated support systems have on the support available for program implementation. The support for program implementation factor can also be affected by the personal characteristics (e.g., attitudes) of individuals who are implementing the program.

The degree to which the project is implemented and operated will be tracked to ensure that the evaluation results reflect the project as it was intended. Data will be collected to measure changes in both intermediate and ultimate outcomes, as well as any unintended outcomes, which may happen as a result of any organizational change. In addition, the evaluation will track the impact of the project and its interventions on veterans and other EEO groups, the Merit Systems Principles, and the Prohibited Personnel Practices. Additional measures may be added to the model in the event that changes or modifications are made to the demonstration plan.

The intervention model at Appendix D will be used to measure the

effectiveness of the personnel system interventions implemented. The intervention model specifies each personnel system change or ''intervention'' that will be measured and shows: (1) The expected effects of the intervention, (2) the corresponding measures, and (3) the data sources for obtaining the measures. Although the model makes predictions about the outcomes of specific intervention, causal attributions about the full impact of specific interventions will not always be possible for several reasons. For example, many of the initiatives are expected to interact with each other and contribute to the same outcomes. In addition, the impact of changes in the HR system may be mitigated by context variables (e.g., the job market, legislation, and internal support systems) or support factors (e.g., training, automation support systems).

C. Evaluation

A modified quasi-experimental design will be used for the evaluation of the S&T Personnel Demonstration Program. Because most of the eligible laboratories are participating in the program, a Title 5 U.S.C. comparison group will be compiled from the Civilian Personnel Data File (CPDF). This comparison group will consist of workforce data from Government-wide research organizations in civilian Federal agencies with missions and job series matching those in the DoD laboratories. This comparison group will be used primarily in the analysis of pay banding costs and turnover rates. The original ''China Lake'' project will serve as a second comparison group that can be used as a benchmark representing a stable pay banding system.

D. Method of Data Collection

Data from several sources will be used in the evaluation. Information from existing management information systems and from personnel office records will be supplemented with perceptual survey data from employees to assess the effectiveness and perception of the project. The multiple sources of data collection will provide a more complete picture as to how the interventions are working. The information gathered from one source will serve to validate information obtained through another source. In so doing, the confidence of overall findings will be strengthened as the different collection methods substantiate each other.

Both quantitative and qualitative data will be used when evaluating outcomes. The following data will be collected: (1) Workforce data; (2) personnel office data; (3) employee attitude surveys; (4) focus group data; (5) local site historian logs and implementation information; (6) customer satisfaction surveys; and (7) core measures of organizational performance.

The evaluation effort will consist of two phases, formative and summative evaluation, covering at least 5 years to permit inter- and intra-organizational estimates of effectiveness. The formative evaluation phase will include baseline data collection and analysis, implementation evaluation, and interim assessments. The formal reports and interim assessments will provide information on the accuracy of project operation, and current information on impact of the project on veterans and EEO groups, Merit System Principles, and Prohibited Personnel Practices. The summative evaluation will focus on an overall assessment of project outcomes after five years. The final report will provide information on how well the HR system changes achieved the desired goals, which interventions were most effective, and whether the results can be generalized to other Federal installations.

VIII. Demonstration Project Costs

A. Cost Discipline

An objective of the demonstration project is to ensure in-house cost discipline. A baseline will be established at the start of the project and salary expenditures will be tracked yearly. Implementation costs (including project development, automation costs, step buy-in costs, and evaluation costs) are considered one-time costs and will not be included in the cost discipline.

The RDE Personnel Management Board will track personnel cost changes and recommend adjustments if required to achieve the objective of cost discipline.

B. Developmental Costs

Costs associated with the development of the personnel demonstration project include software automation, training, and project evaluation. All funding will be provided through the organization's budget. The projected annual expenses are summarized in Table 1. Project evaluation costs are not expected to continue beyond the first 5 years unless the results warrant further evaluation.

TABLE 1.—PROJECTED DEVELOPMENTAL COSTS (THEN YEAR DOLLARS)

[In thousands of dollars]

	FY 00	FY01	FY 02	FY 03	FY 04
Training	.....	40	232	10	
Project Evaluation	40	40	40	40	40
Automation	.....	495	383	202	.....
Totals	40	575	655	252	40

IX. Required Waivers to Law and Regulation

Public Law 106–398 gave the DoD the authority to experiment with several personnel management innovations. In addition to the authorities granted by the law, the following are waivers of law and regulation that will be necessary for implementation of the demonstration project. In due course, additional laws and regulations may be identified for waiver request.

The following waivers and adaptations of certain Title 5, U.S.C., provisions are required only to the extent that these statutory provisions limit or are inconsistent with the actions contemplated under this demonstration project. Nothing in this plan is intended to preclude the demonstration project from adopting or incorporating any law or regulation enacted, adopted, or amended after the effective date of this demonstration project.

A. Waivers to Title 5, U.S. Code

Chapter 31, section 3111: Acceptance of Volunteer Service— Amended to allow for a Voluntary Emeritus corps in addition to student volunteers.

Chapter 31, Section 3132: The Senior Executive Service: Definitions and Exclusions.

Chapter 33, Subchapter 1, section 3318(a): Competitive Service, Selection from Certificate.

Chapter 33, Section 3324: Appointments to Positions Classified Above GS–15.

Chapter 33, Section 3341: Details. This waiver applies to the extent necessary to waive the time limits for details.

Chapter 41, Section 4107(a) and (b) (1) Restriction on Degree Training.

Chapter 43, Section 4302: To the extent necessary to substitute ''pay band'' for ''grade.''

Chapter 43, Section 4303: To the extent necessary to (1) substitute ''pay band'' for ''grade'' and (2) provide that moving to a lower pay band as a result of not receiving the general pay increase because of poor performance is not an action covered by the provisions of section 4303 (a)—(d).

Chapter 43, Section 4304(b)(1) and (3): Responsibilities of the OPM.

Chapter 51, Sections 5101–5111, Classification.

Chapter 53, Sections 5301, 5302 (8) and (9), 5303 and 5304: Pay Comparability System-Sections 5301, 5302, and 5304 are waived only to the extent necessary to allow (1) demonstration project employees to be treated as General Schedule employees, (2) basic rates of pay under the demonstration project to be treated as scheduled rates of pay, and (3) employees in Pay Band V of the E&S Occupational Family to be treated as ST employees for the purposes of these provisions.

Chapter 53, Section 5305: Special Rates.

Chapter 53, Sections 5331–5336: General Schedule Pay Rates.

Chapter 53, Sections 5361–5366 Grade and Pay Retention: This waiver applies only to the extent necessary to (1) replace ''grade'' with ''pay band''; (2) allow demonstration project employees to be treated as General Schedule employees; (3) provide that pay band retention provisions do not apply to conversions from General Schedule special rates to demonstration project pay, as long as total pay is not reduced, to reductions in pay due solely to the removal of a supervisory pay adjustment upon voluntarily leaving a supervisory position; and to movements to a lower pay band as a result of not receiving the General Increase due to a rating of record of ''Unacceptable''; (4) provide that an employee on pay retention whose rating of record is ''Unacceptable'' is not entitled to 50 percent of the amount of the increase in the maximum rate of basic pay payable for the pay band of the employee's position; (5) provide that pay retention does not apply to reduction in basic pay due solely to the reallocation of demonstration project pay rates in the implementation of a staffing supplement; and (6) ensure that for employees of Pay Band V of the E&S occupational family, pay retention provisions are modified so that no rate established under these provisions may exceed the rate of basic pay for GS–15, step 10 (i.e., there is no entitlement to retained rate). This waiver applies to ST employees only if they move to a GS-equivalent position within the demonstration project under conditions that trigger entitlement to pay retention.

Chapter 55, Section 5542(a)(1)–(2): Overtime rates; computation. This waiver applies only to the extent necessary to provide that the GS–10 minimum special rate (if any) for the special rate category to which a project employee belongs is deemed to be the ''applicable special rate'' in applying the pay cap provisions in 5 U.S.C. 5542.

Chapter 55, Section 5545(d): Hazardous duty differential. This waiver applies only to the extent necessary to allow demonstration project employees to be treated as General Schedule employees. This waiver does not apply to employees in Pay Band V of the E&S occupational family.

Chapter 55, Section 5547 (a)–(b): Limitation on premium pay. This waiver applies only to the extent necessary to provide that the GS–15 maximum special rate (if any) for the special rate category to which a project employee belongs is deemed to be the ''applicable special rate'' in applying the pay cap provisions in 5 U.S.C. 5547.

Chapter 57, Section 5753, 5754, and 5755: Recruitment and relocation, bonuses, retention allowances and supervisory differentials. (This waiver applies only to the extent necessary to allow (1) employees and positions under the demonstration project to be treated as employees and positions under the General Schedule and (2) employees in Pay Band V of the E&S occupational family to be treated as ST employees.)

Chapter 59, Section 5941: Allowances based on living costs and conditions of environment; employees stationed outside continental U.S. or Alaska. This waiver applies only to the extent necessary to provide that COLAs paid to employees under the demonstration project are paid in accordance with regulations prescribed by the President (as delegated to OPM).

Chapter 75, Section 7512(3): Adverse actions—This provision is waived only to the extent necessary to replace ''grade'' with ''pay band.''

Chapter 75, Section 7512(4): Adverse actions (This waiver applies only to the extent necessary to provide that adverse action provisions do not apply to (1) conversions from General Schedule special rates to demonstration project pay, as long as total pay is not reduced and (2) reductions in pay due to the removal of a supervisory or team leader pay adjustment upon voluntary movement to a non-supervisory or non-team leader position.)

B. Waivers to Title 5, Code of Federal Regulations

Part 300, sections 300.601 through 605: Time-in-Grade restrictions. Time in grade restrictions are eliminated in the demonstration project.

Part 308, sections 308.101 through 308.103: Volunteer service. Amended to allow for a Voluntary Emeritus Corps in addition to student volunteers.

Part 315, section 315.801 and 315.802: Probationary Period—(This waiver applies only to the extent necessary to extend probationary periods from one year to a maximum of three years for newly-hired permanent career-conditional employees in the E&S occupational family.)

Part 315, section 315.901: Statutory requirements—(This waiver applies only to the extent necessary to replace ''grade'' with ''pay band.'')

Part 316, section 316.301: Term Appointments for more than 4 years.

Part 316, section 316.303: Converting Terms to Status.

Part 316, section 316.305: Eligibility for Within-Grade Increases.

Part 332, subpart D., section 332.404: Order of Selection from Certificates.

Part 335, section 335.103: Covering the length of details and temporary promotions.

Part 337, subpart A, section 337.101(a): Rating Applicants. Waive when 15 or fewer qualified candidates.

Part 351.402(b): Competitive Area.

Part 351.403: Competitive Level—(This waiver applies only to the extent necessary to replace ''grade'' with ''pay band.'')

Part 351, section 351.504: As it relates to years of credit.

Part 351, section 351.701: Assignment Involving Displacement—(This waiver applies to the extent that employee bump and retreat rights will be limited to one pay band except in the case of 30 percent preference eligible, and to include employees with an unsatisfactory current rating of record.)

Part 410, section 410.308(a–f): Training to obtain an academic degree.

Part 410, section 410.309: Agreements to Continue in Service—(This waiver applies to that portion that pertains to the authority of the head of the agency to determine continued service requirements, to waive repayment of

such requirements, and to the extent that the service obligation is to the CECOM RDE organizations.)

Part 430, section 430.203: Rating of Record—(This waiver applies to the extent that the definition shall also include ratings for interns that are based on less than the whole appraisal period and improved ratings following an opportunity to demonstrate acceptable performance as provided for in the waiver of 351.504.)

Part 430, section 430.210: OPM Responsibilities

Part 432, section 432.102: (This waiver applies to the extent that the term ''grade level'' is replaced with ''pay band.'')

Part 432: Modified to the extent that an employee may be removed, reduced in pay band level with a reduction in pay, reduced in pay without a reduction in pay band level and reduced in pay band level without a reduction in pay based on unacceptable performance. Also modified to delete reference to critical element. For employees who are reduced in pay band level without a reduction in pay, Sections 432.105 and 432.106(a) do not apply.

Part 432, sections 432.104 Addressing unacceptable performance. References to ''critical elements'' are deleted as all elements are critical and adding that the employee may be ''reduced in pay band level, or pay, or removed'' if performance does not improve to an acceptable level during a reasonable opportunity period.

Part 432, section 432.105(a) (2): Waive ''If an employee has performed acceptably for 1 year'' to allow for ''within two years from the beginning of a PIP.''

Part 511, subpart A: General Provisions, and subpart B: Coverage of the General Schedule.

Part 511, section 511.601: Classification Appeals modified to the extent that white collar positions established under the project plan, although specifically excluded from Title 5, are covered by the classification appeal process outlined in this section, as amended below.

Part 511, section 511.603(a): Right to appeal—substitute ''pay band'' for ''grade.''

Part 511, section 511.607(b): Non-Appealable Issues—add to the list of issues that are neither appealable nor reviewable, the assignment of series under the project plan to appropriate occupational families.

Part 530, subpart C: Special salary rates.

Part 531, subparts B, D, and E: Determining rate of basic pay, within-grade increases, and quality step increases.

Part 531, subpart F: Locality pay—(This waiver applies only to the extent necessary to allow (1) demonstration project employees, except employees in Pay Band V of the E&S occupational family, to be treated as General Schedule employees; (2) basic rates of pay under the demonstration project to be treated as scheduled annual rates of pay; and (3) employees in Pay Band V of the E&S occupational family to be treated as ST employees for the purposes of these provisions.)

Part 536: Grade and pay retention:—(This waiver applies only to the extent necessary to (1) replace ''grade'' with ''pay band''; (2) provide that pay retention provisions do not apply to conversions from General Schedule special rates to demonstration project pay, as long as total pay is not reduced, and to reductions in pay due solely to the removal of a supervisory pay adjustment upon voluntarily leaving a supervisory position; (3) allow demonstration project employees to be treated as General Schedule employees; (4) provide that pay retention provisions do not apply to movements to a lower pay band as a result of not receiving the general increase due to an annual performance rating of ''Unacceptable''; (5) provide that an employee on pay retention whose rating of record is ''Unacceptable'' is not entitled to 50 percent of the amount of the increase in the maximum rate of basic pay payable for the pay band of the employee's position; (6) ensure that for employees of Pay Band V in the E&S occupational family, pay retention provisions are modified so that no rate established under these provisions may exceed the rate of basic pay for GS–15, step 10 (i.e., there is no entitlement to retained rate); and (7) provide that pay retention does not apply to reduction in basic pay due solely to the reallocation of demonstration project pay rates in the implementation of a staffing supplement. This waiver applies to ST employees only if they move to a GS-equivalent position within the demonstration project under conditions that trigger entitlement to pay retention.

Part 550, sections 550.105 and 550.106: Bi-weekly and annual maximum earnings limitations—This waiver applies only to the extent necessary to provide that the GS–15 maximum special rate (if any) for the special rate category to which a project employee belongs is deemed to be the ''applicable special rate'' in applying the pay cap provisions in 5 U.S.C. 5547.

Section 550.703: Severance Pay—(This waiver applies only to the extent necessary to modify the definition of ''reasonable offer'' by replacing ''two grade or pay levels'' with ''one band level'' and ''grade or pay level'' with ''band level.'')

Section 550.902: Hazardous Duty Differential—(This waiver applies only to the extent necessary to allow demonstration project employees to be treated as General Schedule employees. This waiver does not apply to employees in Pay Band V of the E&S occupational family.)

Part 575, subparts A, B, C, and D: Recruitment Bonuses, Relocation Bonuses, Retention Allowances and Supervisory Differentials. (This waiver applies to the extent necessary to allow (1) employees and positions under the demonstration project covered by pay banding to be treated as employees and positions under the General Schedule and (2) employees in Pay Band V of the E&S occupational family to be treated as ST employees for the purposes of these provisions.)

Part 591, subpart B: Cost-of-Living Allowances and Post Differential—Non-foreign Areas (This waiver applies only to the extent necessary to allow (1) demonstration project employees to be treated as employees under the General Schedule and (2) employees in Band V of the E&S occupational family to be treated as ST employees for the purposes of these provisions.

Section 752.401 (a)(3): Adverse Actions. (This waiver applies only to the extent necessary to replace ''grade'' with ''pay band,'' and to provide that a reduction in pay band level is not an adverse action if it results from the employee's rate of basic pay being exceeded by the minimum rate of basic pay for his/her pay band.)

Section 752.401(a)(4): Adverse Actions. (This waiver applies only to the extent necessary to provide that adverse action provisions do not apply to (1) conversions from General Schedule special rates to demonstration project pay, as long as total pay is not reduced and (2) reductions in pay due to the removal of a supervisory or team leader pay adjustment upon voluntary movement to a non-supervisory or non-team leader position).

Appendix A: RDE Employees by Duty Location

Duty Location	CECOM employees
Fort Huachuca, AZ	24
Melbourne, FL	2
Miami, FL	1
Valparaiso, FL	1
Fort Benning, GA	1
Fort Wayne, IN	1

Duty Location	CECOM employees
Fort Meade, MD	81
Fort Monmouth, NJ	1315
Fort Monmouth	1315
Lakehurst, NJ	14
Zimmerman, OH	1
Fort Sill, OK	29
Arlington, VA	1
Fairfax, VA	6
Fort AP Hill, VA	1
Fort Belvoir, VA	571
McLean, VA	2
Fort Monroe, VA	1
Total All Employees 2052	2052

Note: Totals exclude SES, ST, DCIPS and FWS Employees.

Appendix B: Occupational Series by Occupational Family

I. Engineering & Science

0180 Psychologist Series
0801 General Engineering Series
0810 Civil Engineering Series
0830 Mechanical Engineering Series
0850 Electrical Engineering Series
0854 Computer Engineering Series
0855 Electronics Engineering Series
0893 Chemical Engineering Series
0892 Ceramic Engineering Series
0896 Industrial Engineering Series
0899 Engineering and Architecture Student Trainee Series
1301 General Physical Science Series
1306 Health Physics Series
1310 Physics Series
1320 Chemistry Series
1515 Operations Research Series
1520 Mathematics Series
1550 Computer Science Series
1599 Mathematics and Statistics Student Trainee Series

II. Business/Technical

0018 Safety and Occupational Health Management Series
0028 Environmental Protection Specialist Series
0301 Miscellaneous Administration and Program Series
0334 Computer Specialist Series
0340 Program Management Series
0341 Administrative Officer Series
0342 Support Services Administration Series
0343 Management and Program Analysis Series
0346 Logistics Management Series
0391 Telecommunications Series
0501 Financial Administration and Program Series
0510 Accounting Series
0560 Budget Analysis Series
0802 Engineering Technician Series
0818 Engineering Drafting Series
0856 Electronics Technician Series
1001 General Arts and Information Series
1082 Writing and Editing Series
1083 Technical Writing and Editing Series
1084 Visual Information Series
1101 General Business and Industry Series
1102 Contracting Series
1150 Industrial Specialist Series
1152 Production Control Series
1311 Physical Science Technician Series
1410 Librarian Series
1412 Technical Information Services Series
1499 Library and Archives Student Trainee Series
1521 Mathematics Technician Series
1601 General Facilities and Equipment Series
1640 Facility Management Series
1670 Equipment Specialist Series
1910 Quality Assurance Series
2001 General Supply Series
2003 Supply Program Management Series
2010 Inventory Management Series
2101 Transportation Specialist Series
2130 Traffic Management Series
2181 Aircraft Operation Series
2210 Information Technology Management Series

III. General Support

0085 Security Guard Series
0086 Security Clerical and Assistance Series (Non–CIPMS)
0302 Messenger Series
0303 Miscellaneous Clerk and Assistant Series
0305 Mail and File Series
0312 Clerk-Stenographer and Reporter Series
0318 Secretary Series
0326 Office Automation Clerical and Assistance Series
0332 Computer Operation Series
0335 Computer Clerk and Assistant Series
0344 Management Clerical and Assistance Series
0394 Communications Clerical Series
0399 Administration and Office Support Student Trainee Series
0525 Accounting Technician Series
0561 Budget Clerical and Assistance Series
1087 Editorial Assistance Series
1411 Library Technician Series
2005 Supply Clerical and Technician Series
2102 Transportation Clerk and Assistant Series

Appendix C: Performance Elements

Each performance element is assigned a minimum weight. The total weight of all elements in a performance plan is 100. The supervisor assigns percentage of the 100 in accordance with individual duties/responsibilities objectives and the organization's mission and goals. All employees will be rated against the first four performance elements listed below. Those employees whose duties require team leader responsibilities will be rated on element 5. All managers/supervisors will be rated on element 6.

1. Technical Competence

Exhibits and maintains knowledge, skills, abilities and initiative to produce quality work as defined in individual performance objectives. Assignments are completed in a timely manner with an appropriate level of supervision. The quality and quantity of work meets expectations. Makes prompt, technically sound decisions and recommendations that get the desired results. Where appropriate, seeks and accepts developmental and/or special assignments.—*Minimum Weight:* 15%.

2. Interpersonal Skills

Provides or exchanges oral/written ideas and information in a manner that is timely, accurate and easily understood. Listens effectively so that resultant actions show complete comprehension. Coordinates actions appropriately so that others are included in, and informed of, decisions and actions. Is an effective team player. Accepts personal responsibility for assigned tasks. Is considerate of differing viewpoints, exhibiting willingness to compromise on areas of difference. Exercises tact and diplomacy and maintains effective relationships both within and external to the organization. Readily gives assistance and shows appropriate respect and courtesy.—*Minimum Weight:* 10%.

3. Management of Time and Resources

Meets schedules and deadlines. Arranges work schedules to effectively balance difficult and time-consuming high priority tasks with other lower priority and less time consuming tasks. Generates and accepts new ideas and methods for increasing work efficiency. Effectively utilizes and, where appropriate, properly controls available resources.—*Minimum Weight:* 15%.

4. Customer Satisfaction

Demonstrates care for customers through responsive, courteous, and reliable actions. Promotes relationships of trust and respect. Maintains solid working relationship with existing customers and where appropriate seeks out and develops new customers. Responds to taskings and develops practical solutions to satisfy those needs. Keeps customer informed. Within the scope of job responsibility seeks out and develops new programs and/or reimbursable customer work.—*Minimum Weight:* 10%.

5. Team/Project Leadership

Ensures that the organization/project strategic plan, mission, vision, and values are communicated into the team work plans, products, and services. Provides advice on work methods practices and procedures. Assists members in identifying viable solutions to work issues. As appropriate, distributes and balances workload, checks on work in progress, makes adjustments as needed. Reports to the supervisor on team and individual work accomplishments, problems and training needs. Resolves simple, informal complaints, informs supervisor of performance management issues/problems. (Mandatory for team leaders optional for others, e.g. project leaders.)—*Minimum Weight:* 15%.

6. Supervision and EEO

Plans, develops, communicates and directs the implementation of strategic and operational goals and objectives of the organization. Allocates, and monitors resources and equitably distributes work to subordinates. Initiates personnel actions to recruit, select, promote and/or reassign employees in a timely manner. Develops subordinates, through counseling and positive motivational techniques on job expectations, identification of training needs, and attainment of career goals. Recognizes

and rewards quality performance. Takes corrective action to resolve inadequate performance or behavioral issues. Applies EEO and Merit Principles. Creates a positive, safe and challenging work environment. Ensure appropriate internal controls to prevent fraud, waste or abuse and to safeguard assigned property and resources. (Mandatory for managers/supervisors)—*Minimum Weight:* 25%.

Appendix D: Intervention Model

Intervention	Expected effects	Measures	Data sources
1. Compensation:			
a. Paybanding	—Increased organizational flexibility.	—Perceived flexibility	—Attitude survey.
	—Reduced administrative workload, paperwork reduction.	—Actual/perceived time savings	—Personnel office data, PME results, attitude survey.
	—Advanced in-hire rates	—Starting salaries of banded v. non-banded employees.	—Workforce data.
	—Slower pay progression at entry levels.	—Progression of new hires over time by band, career path.	—Workforce data.
	—Increased pay potential	—Mean salaries by band, career path, demographics.	—Workforce data.
		—Total payroll costs	—Personnel office data.
	—Increased satisfaction with advancement.	—Employee perceptions of advancement.	—Attitude survey.
	—Increased pay satisfaction	—Pay satisfaction, internal/external equity.	—Attitude survey.
	—Improved recruitment	—Offer/acceptances rations	—Personnel office data.
		—Percent declinations	
b. Conversion buy-in	—Employee acceptance	—Employee perceptions of equity, fairness.	—Attitude survey.
		—Cost as a percent of payroll	—Workforce data.
c. Pay differentials/adjustments.	—Increased incentive to accept supervisory/team leader positions.	—Perceived motivational power	—Attitude survey.
2. Performance Management:			
a. Cash awards/bonuses	—Reward/motivate performance	—Perceived motivational power	—Attitude survey.
	—To support fair and appropriate distribution of awards.	—Amount and number of awards by career path, demographics.	—Workforce data.
		—Perceived fairness of awards	—Attitude survey.
		—Satisfaction with monetary awards.	—Attitude survey.
b. Performance based pay progression.	—Increased pay-performance link	—Perceived pay-performance link	—Attitude survey.
		—Perceived fairness of ratings	—Attitude survey.
	—Improved performance feedback.	—Satisfaction with ratings	—Attitude survey.
		—Employee trust in supervisors	—Attitude survey.
		—Adequacy of performance feedback.	—Attitude survey.
	—Decreased turnover of high performers/increased turnover of low performers.	—Turnover by performance rating category.	—Workforce data.
	—Differential pay progression of high/low performers.	—Pay progression by performance score, career path.	—Workforce data.
	—Alignment of organizational and individual performance expectations and results.	—Linkage of performance expectations to strategic plans/goals.	—Performance expectations, strategic plans.
	—Increased employee involvement in performance planning and assessment.	—Perceived involvement	—Attitude survey/focus group.
		—Performance management	—Personnel regulations.
c. New appraisal process	—Reduced administrative burden	—Employee and supervisor perceptions of revised procedures.	—Attitude survey.
	—Improved communication	—Perceived fairness of process	—Focus groups.
d. Performance development	—Better communications of performance expectations.	—Feedback and coaching procedures used.	—Focus groups.
			—Personnel office data.
		—Time, funds spent on training by demographics.	—Training records.
	—Improved satisfaction and quality of workforce.	—Perceived workforce quality	—Attitude survey.
3. Classification:			
a. Improved classification system with generic standards in an automated mode.	—Reduction in amount of time and paperwork spent on classification.	—Time spent on classification procedures.	—Personnel office data.
		—Reduction of paper work/number of personnel actions (classification/promotion).	—Personnel office data.
	—Ease of use	—Managers' perceptions of time savings, ease of use.	—Attitude survey.

Intervention	Expected effects	Measures	Data sources
b. Classification authority delegated to managers.	—Increased supervisory authority/accountability.	—Perceived authority	—Attitude survey.
	—Decreased conflict between management and personnel staff.	—Number of classification disputes/appeals pre/post.	—Personnel records.
		—Management satisfaction with service provided by personnel office.	—Attitude survey.
	—No negative impact on internal pay equity.	—Internal pay equity	—Attitude survey.
c. Dual career ladder	—Increased flexibility to assign employees.	—Assignment flexibility	—Focus groups, surveys.
	—Improved internal mobility	—Perceived internal mobility	—Attitude survey.
	—Increased pay equity	—Perceived pay equity	
	—Flatter organizational structure	—Supervisory/non-supervisory ratios.	Workforce data.
	—Improved quality of supervisory staff.	—Employee perceptions of quality of supervisory.	—Attitude survey.
4. Modified RIF:	—Minimize loss of high performing employees with needed skills.	—Separated employees by demographics, performance scores.	—Workforce data. —Attitude survey/focus group.
	—Contain costs and disruption	—Satisfaction with RIF process	—Attitude survey/focus group.
		—Cost comparison of traditional vs. modified RIF.	—Personnel office/budget data.
		—Time to conduct RIF	—Personnel office data.
		—Number of appeals/reinstatements.	—Personnel office data.
5. Hiring and Authority:			
a. Delegated Examining	—Improved ease and timeliness of hiring process.	—Perceived flexibility in authority to hire.	—Attitude survey.
	—Improved recruitment of employees in shortage categories.	—Offer/accept ratios	—Personnel office data.
		—Percent declinations	—Personnel office data.
		—Timeliness of job offers	—Personnel office data.
		—GPAs of new hires, educational levels.	—Personnel office data.
	—Reduced administrative workload/paperwork reduction.	—Actual/perceived skills	—Attitude survey.
b. Term Appointment Authority	—Increased capability to expand and contract workforce.	—Number/percentage of conversions from modified term to permanent appointments.	—Workforce data. —Personnel office data.
c. Flexible Probationary Period	—Expanded employee assessment.	—Average conversion period to permanent status.	—Workforce data. —Personnel office data.
		—Number/percentage of employees completing probationary period.	—Workforce data. —Personnel office data.
		—Number of separations during probationary period.	—Workforce data. —Personnel office data.
6. Expanded Development Opportunities:			
a. Sabbaticals	—Expanded range of professional growth and development.	—Number and type of opportunities taken.	—Workforce data.
	—Application of enhanced knowledge and skills to work product.	—Employee and supervisor perceptions.	—Attitude survey.
b. Critical Skills Training	—Improved organizational balance.	—Number and type of training	—Personnel office data.
		—Placement of employees, skills imbalances corrected.	—Personnel office data.
		—Employee and supervisor perceptions.	—Attitude survey.
		—Application of knowledge gained from training.	—Attitude survey/focus groups.
7. Combination of All Interventions:			
All	—Improved organizational effectiveness.	—Combination of personnel measures.	—All data sources.
	—Improved management of the workforce.	—Employee/management job satisfaction (intrinsic/extrinsic).	—Attitude survey.
	—Improved planning	—Planning procedures	—Strategic planning documents.
		—Perceived effectiveness of planning procedures.	—Organizational charts.
	—Improved cross functional coordination.	—Actual/perceived coordination	—Attitude survey.
	—Increased product success	—Customer satisfaction	—Customer satisfaction surveys.

Intervention	Expected effects	Measures	Data sources
	—Cost of innovation	—Project training/development costs (staff salaries, contract costs, training hours per employee).	—Demo project records. —Contract documents.
8. Context: Regionalization	—Reduced servicing rations/costs	—HR servicing ratios	—Personnel office data, workforce data.
		—Average cost per employee served.	—Personnel office data, workforce data.
	—No negative impact on service quality.	—Service quality, timeliness	—Attitude survey/focus groups.

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Federal Register

Tuesday,
October 30, 2001

Part V

The President

Proclamation 7488—National Character Counts Week, 2001

Proclamation 7489—National Red Ribbon Week for a Drug-Free America, 2001

Proclamation 7490—United Nations Day, 2001

Federal Register
Vol. 66, No. 210
Tuesday, October 30, 2001

Presidential Documents

Title 3—

The President

Proclamation 7488 of October 22, 2001

National Character Counts Week, 2001

By the President of the United States of America

A Proclamation

Our Nation was built on a foundation of sound moral principles. The heroes of American history responded to threats to their freedom by choosing to fight for these timeless principles, assuming duties that superseded their self-interest. The character of America's founders was exemplified in their willingness to risk death in resisting tyranny and securing liberty and independence. From the frozen soil of Valley Forge to the beaches of Normandy and the deserts of the Persian Gulf region, American soldiers have answered the call of patriotic duty at great personal cost.

Our Nation's character continues to define how we respond to those who threaten America's core principles of liberty, justice, and equality. We saw that character when, in the face of the terrible terrorist attacks of September 11, American firefighters, police officers, and airline passengers sacrificed their lives to save others. We saw it when people across our land donated blood for the victims. And we see it as the children of America donate dollars to help suffering Afghan children. These acts reveal that enduring patriotism and faith are part of the fabric of America.

How our military is responding to these despicable attacks is also indicative of our national character. We are waging a war against terrorists who have hijacked their own peaceful religion in an attempt to justify their evil deeds. As we strike military targets, however, we also are dropping food, medicine, and supplies to relieve the suffering among the victims of the Taliban regime.

The manner in which we face these and other challenges in this war will continue to influence our country for generations to come. In fulfilling our mission with both compassion and courage, we show our children what putting American values into action means. Similarly, parents should teach their children by word and deed to understand and live out the moral values that we hold, such as honesty, accepting responsibility for our actions, and loving our neighbors as ourselves.

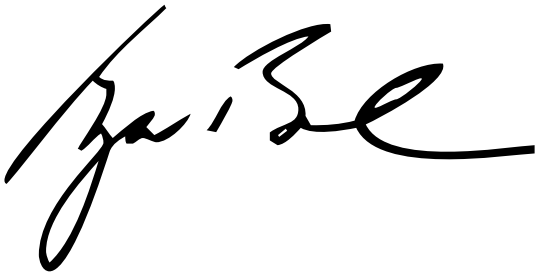
Places of worship, faith-based organizations, and other community groups also play an important role in helping to shape young hearts and minds. Government should cultivate a climate that supports families and organizations that seek to instill sound moral principles in their children. My Administration's Faith-Based and Community Initiative proposes a program that will ensure that faith-based and community caregivers are welcomed as partners in these efforts. In addition, my budget triples the funds available for character education in public schools. I have also proposed to extend Federal after-school funding to programs run by faith-based and community-based organizations.

During this week, we should reflect on the national character we inherited from our forefathers and on the obligation we now have to stand for morality and virtue in the face of evil and terror. Since September 11, our Nation has shown that we are prepared to respond to the evildoers who have attacked the principles for which we stand. Our national character

shall guide us as we wage this war, and in that we know that evil will not triumph.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim October 21 through October 27, 2001, as National Character Counts Week. I call upon the people of the United States to commemorate this week with appropriate ceremonies, activities, and programs.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-second day of October, in the year of our Lord two thousand one, and of the Independence of the United States of America the two hundred and twenty-sixth.



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Presidential Documents

Proclamation 7489 of October 24, 2001

National Red Ribbon Week for a Drug-Free America, 2001

By the President of the United States of America

A Proclamation

Drug and alcohol abuse in America annually create staggering societal costs and prevent millions of people from reaching their full potential at school, on the job, and in their communities. The Department of Health and Human Services estimates that approximately 14 million Americans use illegal drugs and 17 million Americans are alcoholics or abusers of alcohol. To improve the well-being of our Nation and to protect our people, we must continue to make the prevention and treatment of drug and alcohol abuse a national priority.

The rate of abuse of drugs and alcohol by our Nation's youth is cause for alarm. Currently, 3 million young people between the ages of 14 and 17 have an alcohol problem, and more than half of America's school-age children have tried illegal drugs by the time they have finished high school. Research indicates that youth who avoid the early use of alcohol, tobacco, and marijuana are less likely to engage in other harmful behaviors such as crime, delinquency, and other illegal drug use. That is why we must clearly communicate to America's youth that drug and alcohol abuse is dangerous and harmful to both their health and their future.

Through the efforts of families, law enforcement officers, healthcare professionals, teachers, and dedicated community activists, we have made progress in the ongoing war against substance abuse. To continue this progress, my Administration is implementing a comprehensive, results-oriented strategy for reducing illegal drug use in America. We will work cooperatively with other nations to help eradicate illegal drugs at their source. We will increase border security to stop the flow of these drugs into America. And we will provide Federal support to local law enforcement agencies in combating drug trafficking networks.

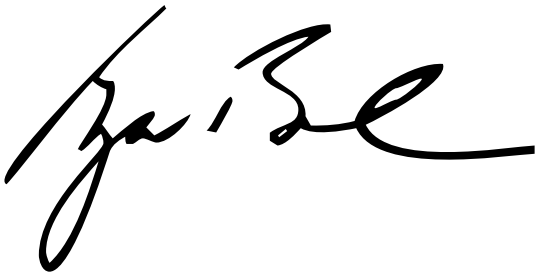
The most effective way, however, to reduce the cycle of youth drug addiction and the crime it causes is to reduce demand. This effort begins at home; and it depends upon the active participation of families, schools, and community organizations in education and outreach programs that clearly communicate to children the dangers inherent in drug and alcohol abuse.

On the occasion of ''National Red Ribbon Week for a Drug-Free America,'' Laura and I are pleased to serve as Honorary Chairpersons of the 2001 National Red Ribbon Campaign. We join all Americans in saying that we will no longer tolerate the destructive impact that drug and alcohol abuse have had on our homes, schools, workplaces, and highways. With strong resolve and creative leadership, we can protect our communities from the preventable dangers of substance abuse and restore dignity and character to millions of men, women, and children who are addicted to drugs and alcohol.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim the period beginning October 23 through October 31, 2001, as National Red Ribbon Week for a Drug-Free America. I encourage citizens to support activities that raise

awareness and encourage prevention of substance abuse. I also call upon every American to wear a red ribbon throughout the week in recognition of their commitment to a healthy, drug-free lifestyle and our commitment to a drug-free America.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fourth day of October, in the year of our Lord two thousand one, and of the Independence of the United States of America the two hundred and twenty-sixth.



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Presidential Documents

Proclamation 7490 of October 24, 2001

United Nations Day, 2001

By the President of the United States of America

A Proclamation

On June 26, 1945, representatives from 50 countries signed the charter creating the United Nations (U.N.), which inaugurated a new era of unprecedented international cooperation. The world had then just emerged victorious against the threat of global tyranny, and these representatives resolved to preserve peace through international cooperation and collective security. Officially coming into existence on October 24, 1945, the U.N. became the central organization charged with carrying out this mission. Since then, it has worked to maintain world peace and security, to develop friendly relations among nations, to cooperate in solving international problems, and to promote respect for human rights.

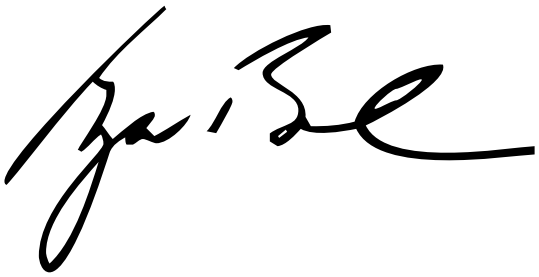
Today, 189 countries belong to the United Nations. The organization's mission remains as urgent as ever, particularly as our world confronts new challenges in the 21st century. The recent terrorist attacks on the United States not only threatened Americans, they also threatened civilized people everywhere who believe in freedom and peace. These tragic events remind us all of the vitally important unified efforts necessary to building international security and to guaranteeing a more peaceful world for us and for our children.

Americans are a generous and compassionate people, willing to do all we can to help alleviate poverty and suffering around the world. These efforts include close cooperative ventures with the United Nations organizations through its many humanitarian programs. As our country observes United Nations Day, 2001, we pause to reflect on the noble history of the U.N. and to praise its many contributions toward providing a better quality of life for people around the globe. We also celebrate the U.N.'s commitment to promoting human rights, protecting the environment, fighting disease, fostering development, and reducing poverty. By reaffirming our desire to advance these goals, America looks forward to continued progress in addressing the challenges that face humanity and to achieving a brighter future for the world.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim October 24, 2001, as United Nations Day. I call upon the people of the United States to observe this day with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fourth day of October, in the year of our Lord two thousand one, and of the

Independence of the United States of America the two hundred and twenty-sixth.



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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT OCTOBER 30, 2001

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Animal and Plant Health Inspection Service

District of Columbia; plants and plant products; movement; published 10-30-01

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Animal and Plant Health Inspection Service

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Japan; comments due by 11-5-01; published 9-4-01 [FR 01-22134]

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Northeastern United States fisheries—

Monkfish, Atlantic herring, and Atlantic salmon; environmental impact statements; comments due by 11-9-01; published 9-10-01 [FR 01-22648]

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Securities:

Accounts holding security futures products; applicability of customer protection, recordkeeping, reporting, and bankruptcy rules, etc.; comments due by 11-5-01; published 10-4-01 [FR 01-24573]

Security futures; margin requirements; comments due by 11-5-01; published 10-4-01 [FR 01-24574]

ENERGY DEPARTMENT

Physicians panel determinations on worker requests for assistance in filing for State workers' compensation benefits; guidelines

Public hearing rescheduled; comments due by 11-8-01; published 9-21-01 [FR 01-23739]

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Air pollution control:

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Arkansas; comments due by 11-8-01; published 10-9-01 [FR 01-24901]

Nevada; comments due by 11-9-01; published 10-10-01 [FR 01-25410]

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TRANSPORTATION DEPARTMENT

Federal Aviation Administration

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TRANSPORTATION DEPARTMENT

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LIST OF PUBLIC LAWS

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H.R. 3162/P.L. 107–56

Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 (Oct. 26, 2001; 115 Stat. 272)

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